SUBMITTED

TRANSCRIPT OF RECORD

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1925

No. 309

JOSE ALEJANDRINO, PETITIONER,

vs.

MANUEL L. QUEZON, ISABELO DE LOS REYES, SANTIAGO FONACIER, ET AL.

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF THE PHILIPPINE ISLANDS

PETITION FOR CERTIORARI FILED MARCH 11, 1926

CERTIORARI GRANTED APRIL 12, 1926

(30,937)

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The United States of America
Philippine Islands

In the Supreme Court of the Philippine Islands

G. R. No. 22041-Concerning Petition for Mandamus and Injunction.

JOSE ALEJANDRINO,
Plaintiff.

VERSUS

MANUEL L. QUEZON, ISABELO DE LOS REYES, SANTIAGO FONACIER. ALEJO MABANAG. BERNABE DE GUZMAN. RAMON FERNANDEZ, EMILIANO T. TIRONA. ANTERO SORIANO. JUAN B. ALEGRE. VICENTE DE VERA. JOSE MA. ARROYO. FRANCISCO ENAJE. JOSE GOMEZ. SERGIO OSMEÑA. CELESTINO RODRIGUEZ. FRANCISCO SORIANO. JOSE A. CLARIN. HADJI BUTU. ESPIRIDION GUANCO. HERMENEGILDO VILLANUEVA. JOSE HONTIVEROS. TEODORO SANDIKO. SANTIAGO LUCERO. FAUSTINO AGUILAR. BERNABE BUSTAMANTE. FRANCISCO DAYAW,
Defendants.

ORIGINAL
(~~Appellate~~ **Jurisdiction**)

BE IT REMEMBERED that, on the dates respectively mentioned, the following proceedings were had in the above-entitled case:

On February 12, 1924, the petitioner, by his attorneys filed with the Office of the Clerk of the Supreme Court, the following petition for mandamus and injunction:

(Caption and title omitted)

PETITION FOR MANDAMUS AND INJUNCTION

Comes now the plaintiff thru his attorneys, and to this Honorable Supreme Court respectfully shows:

I

That he is a Senator for the 12th Senatorial District of these Islands, appointed by the Governor General on November 22, 1923, by virtue of the authorities conferred upon said officer by the Jones Law.

II

That the defendants, with the exception of the last three, are: The first, President of the Senate of these Islands, and as such is called upon to see that the orders of the Senate are complied with, executed and carried into effect, and the others are members of the Senate. Senators Espiridion Guanco, Jose A. Clarin, Jose Ma. Arroyo, Santiago Fonacier and Emiliano T. Tirona are, besides, members of the Committee on Accounts of the Senate who approve the payment of the emoluments that the Senators are entitled to receive.

III

That the defendants Faustino Aguilar, Bernabe Bustamante and Francisco Dayaw are: The first, Secretary, the second, Sergeant-at-Arms and the third, Official Paymaster of the Senate.

IV

That the plaintiff by virtue of his appointment by the Governor General to the office of Senator has, among other things, the right to exercise his office so long as he is not removed by the Governor General, and during the exercise of such office he has the right to exercise all his prerogatives and

privileges and to receive the emoluments as such Senator not only during the time the Senate is in session but also during the time the same is closed, with the right to be considered as such Senator and to enter the building of the Senate free from all obstacle or restriction; to repair to his Senatorial District as such Senator and to be considered as such by the people of his District and by the provincial and municipal officers thereof, and to make in the exercise of his function and duties as Senator for his District, the investigation he may deem necessary or convenient for the prosperity and welfare of his district; to negotiate with the Insular authorities the taking of such measures as he may deem necessary or convenient for the good of his District and even during the time the Senate is not in session to prepare such bills as he may deem convenient for the general prosperity of the country and especially of his District and to hand the same to the Secretary of the Senate signed by him as such Senator, as well as to attend at, and take part as Senator in, any extraordinary session that may be called by the Governor General during the period from one ordinary session to another.

V

That after the plaintiff has taken possession of his office, the Senate, in its session of February 5, 1924, passed a resolution whereby the plaintiff was deprived of all of his prerogatives, privileges and emoluments as such Senator during on year, from January 1, 1924, copy of which resolution is attached hereto marked Exhibit A as a part hereof.

VI

That the Senate passed said resolution without having previously promulgated, established or adopted any regulation or resolution providing any

penalty for the act done by the plaintiff referred to in said resolution, and approved the same without any power or authority to do so, in open violation of the Jones Law, and said resolution is unconstitutional and entirely void and of no effect for the following reasons:

1. Because said resolution punishes an act without the Senate having proviously promulgated, established or adopted any regulation or resolution plaintiff and, therefore, by said resolution, the Senate has deprived the plaintiff of his prerogatives, privileges and emoluments as Senator without due process of law;

2. Because said resolution during the year of suspension deprives the plaintiff of the exercise of his office, and the prerogatives, privileges and emoluments inherent therein in violation of the provision of Section 7 of the Jones Law that the Senators appointed by the Governor General, such as the plaintiff, shall hold office untill they are removed by the Governor General;

3. Because said resolution violates the right expressly recognized by the Jones Law in the Governor General to appoint a Senator for the 12th Senatorial District and to cause the latter to exercise his office until removed by him;

4. Because said resolution deprives the inhabitants of the 12th Senatorial District of their rights to be represented in the Senate during the year of suspension, for the office not being vacant during said period of time, the Governor General cannot appoint any other in lieu of the plaintiff;

5. Because the Senate has no power or authority to deprive the plaintiff, even temporarily, of the exercise of his office.

VII

That the defendants, in the respective capacities in which they are sued, attempt to comply with, execute and carry into effect, or to cause to be complied with, executed and carried into effect, the suspension of the plaintiff depriving him, during the period of one year, of the exercise of his office and of all of his prerogatives, privileges and emoluments as Senator, as said defendant Senators and their President do not recognize the plaintiff's right to exercise such office and prevent him from exercising same, and cause all the officers, employes and other subordinates of the Senate not to recognize the plaintiff as Senator and to prevent him from exercising his office and enjoying his prerogatives, privileges and emoluments, and the President of the Senate, moreover, gives the necessary orders for the carrying into effect of said order of suspension, and the other defendants Faustino Aguilar and Bernabe Bustamante execute and comply with the orders and restrictions of the Senate and its President in order that the plaintiff may not be recognized as Senator and may not exercise his prerogatives and privileges as such Senator in the Senate building and the defendant Francisco Dayaw, Official Paymaster of the Senate requires him to refund his emoluments received corresponding to the period that has already elapsed from January 1st of this year and refuses to pay the emoluments to which the plaintiff is entitled.

VIII

That he resorts to this Honorable Court in this proceeding and special remedy for he has no other easy, adequate and speedy remedy to vindicate his constitutional rights.

IX

That if the defendants are not prevented from

complying, executing or carrying into effect, or ordering, causing or permitting to be complied with, executed or carried into effect, said resolution of suspension, the plaintiff would be deprived of the exercise of his office and all of his prerogatives, privileges and emoluments until final judgment is rendered by this Honorable Court, with irreparable damage and injustice to the plaintiff and the only remedy for avoiding such damages and injustices, is to issue a writ of preliminary injunction enjoining each and everyone of the defendants from complying with, executing or carrying into effect, or ordering, causing or permitting to be executed, complied with or carried into effect, said resolution of suspension.

*

* *

Wherefore, the plaintiff prays this Honorable Court:

1. That a writ of preliminary injunction be issued, upon the giving of a bond by the plaintiff, against each and everyone of the defendants enjoining them from complying with, executing or carrying into effect, or from ordering, causing or permitting to be complied with, executed or carried into effect, the aforesaid resolution of the Senate suspending the plaintiff from his office;

2. That final judgment be rendered declaring the aforesaid resolution of the Senate to be unconstitutional and therefore null and void and of no effect and that the plaintiff has the right to exercise his office as Senator with all his prerogatives, privileges and emoluments until he is removed by the Governor General;

3. That as a consequence of the foregoing, a final writ of mandamus and final injunction be issued against each and everyone of the defendants in order that they should recognize the right of the

plaintiff to exercise his office as Senator and to enjoy all of his prerogatives, privileges and emoluments, prohibiting them from depriving or preventing the plaintiff from the exercise of his office and the enjoyment of all of his prerogatives, privileges and emoluments, or from complying, executing or carrying into effect, said order of suspension or from ordering, permitting or causing said resolution of suspension to be complied with, executed or carried into effect. The plaintiff also prays that in view of the nature of this case the periods of its proceedings be shortened in so far as may be reasonably possible.

Manila, P. I., February 11, 1924.

ARANETA AND ZARAGOZA
By (Sgd.) GREGORIO ARANETA

I, Jose Alejandrino, of age, and resident of the City of Manila, P. I. being first duly sworn depose and say: That I am the plaintiff in the above entitled case; that I have read the foregoing complaint and have understood the same; and that its contents are true and correct to the best of my knowledge and belief and the information I have on the matter.

Manila, P. I., February 11, 1924.

(Sgd.) JOSE ALEJANDRINO

Subscribed and sworn to before me this 11th day of February, 1924 in the City of Manila, P. I. The affiant has exhibited to me his Cedula certificate No. 1714610 issued at Arayat, Pampanga, on the second day of February, 1923.

(Sgd.) SALVADOR ARANETA
Notary Public
Until December 31, 1924
Doc. 9, Page 3, Book 1.
NOTARIAL REGISTER.

Exhibit A

S. F. No. 4.

SIXTH PHILIPPINE LEGISLATURE } P. R. S. No. 37
SECOND PERIOD }

PHILIPPINE SENATE

R. S. No. 26

Presented by the Committee on Elections and Privileges on January 28, 1924; and

Adopted by the Senate on February 5, 1924.

RESOLUTION

DEPRIVING THE HONORABLE JOSE ALEJANDRINO OF ALL OF HIS PREROGATIVES, PRIVILEGES AND EMOLUMENTS AS SENATOR FOR THE 12TH DISTRICT FOR THE PERIOD OF ONE YEAR FROM THE FIRST OF JANUARY 1924.

Resolved: That the Honorable Jose Alejandrino, Senator for the 12th District, be, as he is hereby, declared guilty of disorderly conduct and flagrant violation of the privileges of the Senate for having treacherously assaulted the Honorable Vicente de Vera, Senator for the 6th District on the occasion of certain phrases being uttered by the latter in the course of the debate regarding the credentials of said Mr. Alejandrino;

Resolved, further: That the Honorable Jose Alejandrino be, as he is hereby, deprived of all of his prerogatives, privileges and emoluments as such Senator during one year from the first of January, 1924;

And Resolved, lastly: That the said Honorable Jose Alejandrino, being a Senator appointed by the

Governor General of these Islands, a copy of this resolution be furnished said Governor General for his information.

Adopted February 5, 1924.

I hereby certify that the foregoing resolution (R. S. No. 26—6. a. L. F.) was adopted by the Senate on February 5, 1924.

(Sgd.) FAUSTINO AGUILAR
Secretary of the Senate.

On February 12, 1924, the following summons was issued:

(Caption and title omitted)

WHEREAS, This Court has approved a resolution this date which, if quoted, is as follows:

"Considering the petition filed in case R. G. No. 22041, Jose Alejandrino *vs.* Manuel L. Quezon *et al.*, praying that a writ of mandamus be issued commanding each and every defendant named therein to recognize and acknowledge the right of the petitioner to the office of senator and to enjoy all the prerogatives, privileges and emoluments attached to said office; and that pending these proceedings a preliminary injunction be issued, it is ordered that the respondents be required to demur or answer to the petition within ten days from notice hereof; and to show cause, within ten days from notice hereof why the preliminary injunction prayed for should not issue."

NOW, WHEREFORE, You are hereby ordered to demur or answer within ten days from the receipt of this summons with the copy of the petition; and to show cause within five days from notice hereof why the preliminary injunction prayed for should not issue.

Given by Hon. MANUEL ARAULIO, Chief Justice of the Supreme Court of the Philippine Islands, this twelfth day of February, 1924.

(Sgd.) V. ALBERT
Clerk, Supreme Court, P. I.

On February 18, 1924, the respondents filed the following Special Appearance to Object to Jurisdiction:

(Caption and title omitted)

SPECIAL APPEARANCE TO OBJECT TO JURISDICTION

Comes the Attorney-General in representation of the respondents in the above entitled cause and enters this special appearance on their behalf for the sole purpose of objecting to the jurisdiction of the court. The objection is based on the ground that the said respondents are not subject to the jurisdiction and control of this court for the reason that the action is brought against them in their official capacities as members and agents, respectively, of the Philippine Senate, and is in effect a suit against the Philippine Senate, which is a branch of one of the coordinate departments of the Government of the Philippine Islands, each one of which is sovereign and supreme within its respective sphere and none of which is superior to the others, as this court has repeatedly declared in numerous cases already decided. (*Gregorio Perfecto v. Wood, R. G. No. 20867; Teodoro Abueva v. Leonard Wood et al., R. G. No. 21327; Severino v. Governor General et al., 16 Phil. Rep. 366; Province of Tarlac v. Gale, 26 Phil. Rep. 338; Forbes v. Tiaco, 16 Phil. Rep. 534; Barcelon v. Baker, 5 Phil. Rep. 87; U. S. v. Ang Tan Ho, 20 Off. Gaz. 1518; In re McCulloch Dick, 38 Phil. Rep. 41; Veloso v. Boards of Canvassers, 39 Phil. Rep. 886; Borromeo v. Mariano,*

41 Phil. Rep. 322.)

WHEREFORE, this court may not entertain the herein petition for a writ of mandamus and injunction against the respondents, and the same should be dismissed with costs.

Manila, February 18, 1924.

(Sgd.) ANT. VILLA-REAL,
Attorney-General,
Attorney for Respondents.

After a thorough discussion of the question by both parties who presented their arguments orally and in writing, under date of March 6, 1924, the Supreme Court in passing over the said Special Appearance, issued the following order.

(Caption and title omitted)

WHEREAS, This Court has approved a resolution this date which, qouted, is as follows:

"Upon consideration of the petition filed in case R. G. No. 22041, Jose Alejandrino vs. Manuel L. Quezon *et al.*, praying that a writ of mandamus be issued commanding each and every defendant named therein to recognize and acknowledge the right of the petitioner to the office of senator and to enjoy all the prerogatives, privileges and emoluments attached to said office, and of the special appearance to object to jurisdiction of this Court filed by the Attorney-General on behalf of the respondents, it is ordered that the respondents be and are hereby required to demur or answer within five days from notice hereof."

NOW, THEREFORE, You are hereby ordered to demur or answer within five days from the receipt of this summons.

GIVEN by HON. MANUEL ARAULIO, Chief Justice of the Supreme Court of the Philippine Islands, this 6th day of March, 1924.

(Sgd.) V ALBERT
Clerk, Supreme Court, P. I.

On March 8, 1924, the Attorney-General, filed the following exception:

(Caption and title omitted)

EXCEPTION

The undersigned Attorney-General, in behalf of the respondents in the above entitled cause, hereby excepts to the order of this Court, dated March the 6th, 1924, requiring the said respondents to demur or answer to the petition.

Manila, March 7, 1924.

(Sgd.) ANT. VILLA-REAL,
Attorney-General,
Attorney for the respondents.

On March 10, 1924, the Supreme Court issued the following resolution:

Considering the motion of the Attorney-General filed in case No. 22041, José Alejandrino vs. Manuel L. Quezon *et al.*, excepting to the order of this Court dated March 6th, requiring the respondents to demur or answer to the petition filed therein, EXCEPTION NOTED.

On March 11, 1924, the Attorney-General filed the following demurrer:

(Caption and title omitted)

DEMURRER

Out of deference to the order of this Court,

dated March 6th, 1924, requiring the respondents to demur or answer to the petition, but without waiving the objection to jurisdiction heretofore raised by the special appearance, the undersigned Attorney-General, in behalf of the respondents, now files this demurrer to the petition in the above entitled action, and for his grounds of demurrer alleges the following:

I

The court has no jurisdiction of the subject-matter of the action, because—

(1) Under our system of government, the legislative, the executive, and the judicial departments are co-equal and co-important so that no department may, by mandamus or injunction, exercise control over another department, for neither is inferior to the other.

(2) The imposition of a disciplinary measure upon a member of the Senate who has offended against its dignity, is a matter of internal concern for that body, over which the other departments may not exercise jurisdiction, in virtue of the separation of powers established by the fundamental law.

(3) The Organic Law of the Philippine Islands has invested each House of the Philippine Legislature with authority to punish a member for disorderly behavior, as a means of preserving its honor, dignity and efficiency; in the manner of exercise of this constitutional power, each House is independent of the courts and is not subject to their control and supervision.

(4) The subject-matter of the action is political in character and presents no justiciable controversy to justify the intervention of the courts. It also concerns the conduct of the members of the

Senate in their capacity as such, as to which they may not be questioned in any other place.

(5) The Senate is not an "inferior board" for the purposes of sections 515 and 516 of Act No. 190, giving the Supreme Court jurisdiction to issue writs of mandamus and prohibition.

(6) While the action is in form against the members and officers of the Senate, it is in effect a suit against the Senate.

II

The petition does not state facts sufficient to constitute a cause of action in that—

(1) It does not appear from the allegations therein contained that the respondents are neglecting the performance of a duty specially enjoined upon them by law, or that they have unlawfully deprived the petitioner of any right which may be enforced by mandamus; or that they have exceeded their jurisdiction; while, on the contrary, it appears that the respondents, in the performance of the act complained of, were acting in the lawful exercise of their authority.

(2) The act which the petitioner seeks to have the respondents perform, as well as the act which he seeks to have enjoined, is political and discretionary in nature. Mandamus or injunction will not lie to control the discretion of a law-making body or of its members.

(3) The petitioner is not deprived of any private right protected by the Constitution to entitle him to maintain these proceedings.

(4) The Senate of the Philippine Islands, in the exercise of its authority to punish a member for disorderly behaviour, as provided for in the Jones Law, and by virtue of the power inherent in all legislative bodies to impose disciplinary measures upon an offending member, may as a punish-

ment for disorderly conduct, temporarily suspend an appointive member from office, and this it may do even if there be no rule previously adopted by that body, provided this specific punishment for the particular act committed by such member.

(5) The granting of the writ prayed for would be contrary to the public interests, because it would tend to create a conflict between the legislative and the judicial departments of the government. The writ, if granted, would, also, prove ineffectual.

III

There is a misjoinder or defect of parties defendant in that—

(1) The action is brought against the members of the Senate individually when the real purpose of the suit is to control the conduct of the Senate as a body.

(2) The Secretary, the Sergeant-at-arms, and the Disbursing Officer of the Senate are not proper parties to the proceeding, because, as mere servants of the Senate, they cannot act independently of the will of that body and disregard its mandate.

WHEREFORE, it is earnestly prayed that the complaint be dismissed with costs.

Manila, March 11, 1924.

ANT. VILLA-REAL,
Attorney-General,
Attorney for the Respondents.

On March 17, 1924 the petitioner by his attorneys filed the following answer to the demurrer:

(Caption and title omitted)

ANSWER TO THE DEMURRER.

COMES NOW the petitioner by and thru his un-

dersigned attorneys, and answering specifically the different points raised and statements made by the Attorney-General in his demurrer to this Honorable Supreme Court respectfullly alleges:

I.

In answer to the first proposition that the Court has no jurisdiction of the subject-matter of the action, we beg to submit the following brief considerations.

(1)—From the doctrine of the American Government that the legislative, the executive and the judicial departments are co-equal and co-important does not follow that the Judiciary, whose constitutional duty is to declare and interpret the Supreme Law of the land, has not the power to declare a law or a resolution passed by the Legislature or any of its Houses unconstitutional. A corollary to the power of the Judiciary to declare null and void an act of the Legislature or any of its houses is the power to compel obedience to such a decree. Neither the Governor-General nor any member of the Legislature who should try to disregard such a decree of the Court would be beyond the reach of the judicial jurisdiction. The will of the people, as embodied in the Constitution, is paramount to the will of any of the departments of the Government. The Judiciary has the monopoly to declare which is the will of the People. Hence, where the will of the executive or legislative departments violates the will of the people, it is for the Judiciary to declare that the will of the people has been transgressed.

The Attorney General quotes the following from Malcolm's Philippine Government:

"The executive, legislative and judicial branches of government are fundamentally co-ordinate and co-important, but if one assumes the powers of the other, the usurper becomes the superior and not an equal".

Granted, for the purpose of discussing the jurisdiction of the Court that it is not the power of the Senate to suspend one of its appointive members, the Judiciary in taking jurisdiction of the case would not be assuming the powers of the Senate, but rather exercising its own exclusive power, which is that of exercising a monopoly in the interpretation of the Constitution or Organic Law.

(2)—The imposition of a disciplinary measure upon a member of the Senate for an offence against its dignity, may be regarded, as contended by the Attorney-General, to be a matter of internal concern for that body, over which the other departments may not exercise jurisdiction, by virtue of the separation of powers established by the fundamental law; but—we add—provided always that the Senate, in the imposition of such a disciplinary measure, has not overstepped its own powers, as limited by the Organic Law. From the very moment that the Senate, under the guise of exercising such disciplinary measures, transgresses the Constitution, the act ceases to be a matter of mere internal concern. The law of the land, in the first place, is violated. And in the present instance, the right of the Governor-General of having the appointive Senator in his office with full privileges until removed by him is besides violated. Evidently, under these circumstances, the resolution of the Senate is not a mere matter of internal concern.

(3)—"The Organic Law of the Philippine Islands has invested each House of the Philippine Legislature with authority to punish a member for disorderly behavior, as a means of preserving its honor, dignity and efficiency." Up to this point we concur with the Attorney-General. Then he continues: "in the manner of exercise of this constitutional power, each House is independent of the

courts and is not subject to their control and supervision". This statement carries an innuendo which needs a distinction. If within the power of *the* Senate to punish the power to suspend, is not included—as we contend—the Judiciary, in taking jurisdiction of this case, is not controlling the mere manner of exercise of the power of the Senate to punish, for the Senate tried to exercise a power which is not within its constitutional privileges, but rather, a power which destroys all constitutional limitations. The duty of the judiciary in these cases is very apparent.

(4)—"The subject-matter of the action is political in character and presents no justiciable controversy to justify the intervention of the courts." Again in this statement of the Attorney General, he forgets that we are basing the Jurisdiction of the Court in this case on an alleged violation of the Constitution, which certainly presents an issue within the judiciary's constitutional duty to decide.

The Attorney-General proceeds: "It also concerns the conduct of the members of the Senate in their capacity as such, as to which they may not be questioned in any other place." A Senator for his official acts may not be subject to an action for damages, or subjected to a criminal responsibility. But the validity of his acts can be questioned, and the Courts after declaring them unconstitutional can enforce their judgment, even as against the members of the Legislature.

(5)—"The Senate is not an "inferior board" for the purposes of sections 515 and 516 of Act No. 190 giving the Supreme Court jurisdiction to issue writs of mandamus and prohibition." In answer to this proposition of the Attorney General we respectfully submit to the attention of this Supreme Court

the wordings of both sections: "inferior tribunal, corporation, board or person" sec. 515; and "inferior tribunals, corporations, board or persons" sec. 516. From this wordings it is evident that both sections talk of inferior tribunal but not of inferior corporation, inferior board or inferior person. In the case of Concepción vs. Paredes, 42 Phil. Rep. 599, this Supreme Court exercised control over the person of the Secretary of Justice who is not an "inferior person" to the Supreme Court.

(6)—The action is against the members of the Senate, to enjoin them to proceed in carrying out the full execution of a null and void decree of the Senate. If the Judiciary is in duty bound to see to it that the Supreme Law of the Land is held paramount, it follows that the judiciary has the power to enjoin any person and any officer not to violate the Constitution. Not only the members of the Legislature, but even the Legislature itself as an entity, would be subject to the jurisdiction of the Judiciary, where the Legislature would proceed to execute and carry out the provisions of a statute judicially declared to be unconstitutional. It is of no material consequence then the statement of the Attorney General that while the action is in form against the members and officers of the Senate, it is in effect a suit against the Senate.

Our memorandum of February 29, 1924, in answer to the special appearance, as supplemented by the memorandum herein attached, discusses at large this question of the jurisdiction of the Court.

II.

In answer to the second proposition that the petition does not state facts sufficient to constitute a cause of action, we submit the following considerations:

(1)—This first proposition raises the question as to the powers of the Senate to suspend Senator Alejandrino. Supporting our proposition that the Senate exceeded its own jurisdiction in suspending Senator Alejandrino we have prepared the Memorandum herein attached.

(2)—If the Senate has not the power to suspend Senator Alejandrino, the act which the petitioner seeks to be performed or enjoined is not political and discretionary in nature, as asserted by the Attorney General.

(3)—If the Senate has not the power to suspend Senator Alejandrino, by such suspension the law of the land as embodied in the Constitution, the rights of his senatorial district, the rights of the Governor General, and Senator Alejandrino's rights as such Senator have been violated by the Senate. The rights of a Senator, as such Senator, are certainly not mere private rights. They are rights of a higher nature involving paramount prerogatives, and more so carefully protected by the Constitution.

III.

In answer to the third proposition that there is misjoinder or defect of parties defendant we beg to submit that—

(1)—The action is brought to enjoin the members of the Senate from carrying out a void resolution of the Senate and hence they are proper parties in these proceedings.

(2)—The Secretary, the Sergeant-at-arms and the Disbursing Officer of the Senate were made parties defendant for they have some intervention in the execution of said void resolution and it is but fair and proper to give them their day in court.

Wherefore, the undersigned attorneys pray this Hon. Supreme Court to issue an order overruling

the demurrer filed by the respondents.

Manila, P. I., March 15, 1924.

ARANETA & ZARAGOZA
By (Sgd.) GREGORIO ARANETA
Attorneys for plaintiff
28 Juan Luna, Manila.

After a thorough discussion of the demurrer by both parties who presented their arguments orally and in writing, under date of March 25, 1924, the Supreme Court expressed its opinion on the question by the following resolution:

> After a careful consideration of the petition, the demurrer and the arguments pro and con by the respective parties, a majority of the Court is of the opinion: (a) that it has jurisdiction to consider the questions presented, and (b) that the facts stated in the petition are not sufficient to constitute a cause of action; and it is therefore hereby ordered that the petitioner be permitted, if he so desires to file an amended petition within twenty-four hours from notice hereof, and that the respondents be required to demur or answer the petition, when amended, within twenty-four hours after the receipt of a copy of the amended petition. It is so ordered.
>
> Chief Justice Araullo dissents from the opinion of the majority of the Court, for the reason that this Court is without jurisdiction over the subject matter of the action and to consider the questions presented by the petitioner and having no jurisdiction this Court cannot grant the petitioner the right to amend his pleading on the ground that the facts stated in the petition are not sufficient to constitute a cause of action. And consequently,

this petition should be dismissed.

On the same day, March 25, 1924, the Attorney-General filed the following exception:

(Caption and title omitted)

The undersigned Attorney-General, in behalf of the respondents in the above entitled cause, hereby excepts to the resolution of this court, dated March 25, 1924, in so much as the said resolution holds that this court has jurisdiction to consider the questions presented, and also in so much as the said resolution requires the respondents to demur or answer the petition, when amended.

Manila, March 25, 1924.

(Sgd.) ANT. VILLA-REAL,
Attorney-General,
Attorney for the Respondents.

On the same day, counsel for petitioner filed the following exception:

(Caption and title omitted)

EXCEPTION

COMES now the petitioner in the above entitled case, through his undersigned attorneys, and to this Hon. Supreme Court, alleges:

That he excepts to the resolution of this Hon. Supreme Court, of date March 25, 1924, adopted in the above entitled case.

Manila, P. I., March 25, 1924.

ARANETA & ZARAGOZA,
By (Sgd.) GREGORIO ARANETA.
Attorneys for Petitioner

On the same day, counsel for petitioner lifed the following amendment to their petition:

(Caption and title omitted)

AMENDMENT TO PETITION
FOR MANDAMUS AND INJUNCTION.

Comes now plaintiff by and through the undersigned attorneys, before this Honorable Supreme Court, and amends paragraph V of his "Petition for Mandamus and Injunction", so as to read as follows:

V

That after the plaintiff has taken possession of his office, the Senate in its session of February 5, 1924, passed a resolution whereby the plaintiff was deprived of all of his prerogatives, privileges and emoluments as such Senator during one year, from January 1, 1924, copy of which resolution is attached hereto marked Exhibit A as a part hereof; that the agression commited by plaintiff in the person of Senator Vicente Vera did not occur in the hall where the Senate holds its sessions, that it occured after the Senate had adjourned its session the night of the event, that it did not cause any disorder, disturbance, nor impediment in any of the acts or functions of the Senate, and that such resolution of suspension did not, nor could have, for its end, to restore the order not disturbed by the act committed by plaintiff.

With the exception of this amendment, the plaintiff maintains all the other paragraphs of said petition.

Manila, March 25, 1924.

ARANETA & ZARAGOZA,
By (Sgd.) GREGORIO ARANETA.

(Oath Omitted)

On March 26, 1924, the Supreme Court having received the aforementioned exceptions, issued the following resolution:

The Court ordered that the exceptions of the Attorney-General, in behalf of the respondents, and of attorney Gregorio Araneta, in behalf of the petitioner, in case R. G. No. 22041, entitled José Alejandrino vs. Manuel L. Quezon *et al.*, to the minute order of this Court, entered on March 25, 1924, be noted and attached to the record.

On the same day, March 26, 1924, the Attorney-General filed the following demurrer to the amended complaint:

(Caption and title omitted)

DEMURRER

Out of deference to the order of this Court, dated March 25th, 1924, requiring the respondents to demur to or answer the petition, when amended, but without waiving the objection to jurisdiction heretofore raised by the special appearance, the undersigned Attorney-General, in behalf of the respondents, now files this demurrer to the amended petition in the above entitled action, and for his grounds of demurrer alleges the following:

I

The court has no jurisdiction of the subject-matter of the action, because—

(1) Under our system of government, the legislative, the executive, and the judicial departments ar co-equal and co-important so that no department may, by mandamus or injunction, exercise control over another department, for neither is inferior to the other.

(2) The imposition of a disciplinary measure upon a member of the Senate who has offended against its dignity, is a matter of internal concern for that body, over which the other departments may not exercise jurisdiction, in virtue of the se-

paration of powers established by the fundamental law.

(3) The Organic Law of the Philippine Islands has invested each House of the Philippine Legislature with authority to punish a member for disorderly behavior, as a means of preserving its honor, dignity and efficiency; in the manner of exercise of this constitutional power, each House is independent of the courts and is not subject to their control and supervision.

(4) The subject-matter of the action is political in character and presents no justiciable controversy to justify the intervention of the courts. It also concerns the conduct of the members of the Senate in their capacity as such, as to which they may not be questioned in any other place.

(5) The Senate is not an "inferior board" for the purposes of sections 515 and 516 of Act. No. 190, giving the Supreme Court jurisdiction to issue writs of mandamus and prohibition.

(6) While the action is in form against the members and officers of the Senate, it is in effect a suit against the Senate.

II

The petition does not state facts sufficient to constitute a cause of action in that—

(1) It does not appear from the allegations therein contained that the respondents are neglecting the performance of a duty specially enjoined upon them by law, or that they have unlawfully deprived the petitioner of any right which may be enforced by mandamus; or that they have exceeded their jurisdiction; while, on the contray, it appears that the respondents, in the performance of the act complained of, were acting in the lawful exercise of their authority.

(2) The act which the petitioner seeks to have the respondents perform, as well as the act which he seeks to have enjoined, is political and discretionary in nature. Mandamus or injunction will not lie to control the discretion of a law-making body or of its members.

(3) The petitioner is not deprived of any private right protected by the Constitution to entitle him to maintain these proceedings.

(4) The Senate of the Philippine Islands, in the exercise of its authority to punish a member for disorderly behavior, as provided for in the Jones Law (Sec. 18, par. 1), and by virtue of the power inherent in all legislative bodies to impose disciplinary meansures upon an offending member, may, as a punishment for disorderly conduct, temporarily suspend an appointive member from office, or temporarily deprive him of the privileges and emoluments thereunto appertaining, and this it may do even if there be no rule previously adopted by that body providing this specific punishment for the particular act committed by such member. For an unlawful assault committed by an appointive member upon the person of another member, the Philippine Senate may likewise declare the assailant guilty of a disorderly behavior and a violation of the privileges of the Senate, and as a punishment for such misconduct, deprive him of the privileges and emoluments as senator for a period of one year; and this would be true even if the assault were not made on the very floor of the Senate or during its session, so long as the same was committed because of words spoken in debate by the offended member on the floor of the Senate (as clearly appears to be the fact in the instant case according to the resolution attached to the petition as Exhibit A), such assault, wherever committed,

being an offense to the dignity and prestige of that body and a violation of the constitutional privilege accorded to the individual members of the Legislature that "for any speech or debate in either House they shall not be questioned in any other place." (*Sec. 18, par. 2, Jones Law*).

(5) The granting of the writ prayed for would be contrary to the public interests, because it would tend to create a conflict between the legislative and judicial departments of the government. The writ, if granted, would, also, prove ineffectual.

III

There is a misjoinder or defect of parties defendant in that—

(1) The action is brought against the members of the Senate individually when the real purpose of the suit is to control the conduct of the Senate as a body.

(2) The Secretary, the Sergeant-at-arms, and the Disbursing Officer of the Senate are not proper parties to the proceeding because, as a mere servants of the Senate, they cannot act independently of the will of that body and disregard its mandate.

WHEREFORE, it is earnestly prayed that the complaint be dismissed with costs.

Manila, March 25, 1924.

ANT. VILLA-REAL,
Attorney-General,
Attorney for the Respondents.

On the same day, March 26, 1924, the Supreme Court passed the following resolution:

At the request of Mr. Justice Street, the Court ordered spread in the minutes to be attached to the record of the case his position in the case of

Alejandrino vs. Quezon *et al.*, R. G. No. 22041, as follows:

"Justice Street limits himself for the present to the proposition that, upon the state of fact appearing in the petition, the demurrer is well taken and the action cannot be maintained unless the petition is amended, within the time allowed by the court, so as to show a good cause of action."

On the same day, the Supreme Court issued the following resolution:

The amended complaint and the demurrer hereto filed in case No. 22041, José Alejandrino vs. Manuel L. Quezon *et al.*, having been received in this Court in compliance with the order of March 25, 1924, the Court ordered that the hearing of the demurrer be set for Thursday, March 27th, at nine o'clock a. m., advising the parties thereof.

On the same day of the hearing, March 27, 1924, with the consent of the Attorney-General and of the Supreme Court, counsel for petitioner made a Second Amendment to his complaint as follows:

(Caption and title omitted)

SECOND AMENDMENT TO PETITION FOR MANDAMUS AND INJUNCTION

Comes now plaintiff by and through the undersigned attorneys, before this Honorable Supreme Court, and amends paragraph V of his "Petition for Mandamus and Injunction", so as to read as follows:

V

That after plaintiff has taken possession of his office, the Senate in its session of February 5, 1924, passed a resolution whereby the plaintiff was deprived of all of his prerogatives, privileges and emoluments as such Senator during one year, from

January 1, 1924, copy of which resolution is attached hereto marked Exhibit A as a part hereof; that the agression committed by plaintiff in the person of Senator Vicente Vera did not occur in the hall where the Senate holds its sessions, that it occured after the Senate had adjourned its session the night of the event, that it did not cause any disorder, disturbance, nor impediment in any of the acts or functions of the Senate, and that such resolution of suspension did not, nor could have, for its end, to restore the order not disturbed by the act committed by plaintiff; that, although on the 5th of December, 1923, when the said act was committed the plaintiff had already been appointed by the Governor General as Senator of the 12th Senatorial District, the Senate questioned the way in which it was informed of the appointment, and only on the night of the event said appointment was approved by the Senate, but the plaintiff had no knowledge of such resolution of the Senate, at the time he committed the agression; that the agression committed by the plaintiff consisted of a buffet given to the lips of Senator Vera and did not produce any injury; and that taking into account the act in itself and the circumstances sorrounding it, the penalty imposed on the plaintiff is cruel and unusual.

With the exception of this amendment, the plaintiff maintains all the other paragraphs of said petition.

Manila, March 26, 1924.

ARANETA & ZARAGOZA,
By (Sgd.) GREGORIO ARANETA.

(Oath omitted).

On September 12, 1924, the Supreme Court rendered the following decision:

(Caption and title omitted)

DECISION

MALCOLM, *J.*:

The petitioner in this original proceeding in mandamus and injunction is Jose Alejandrino, a Senator appointed by the Governor-General to represent the Twelfth Senatorial District. The respondents are Manuel L. Quezon, President of the Philippine Senate; Isabelo de los Reyes, Santiago Fonacier, Alejo Mabanag, Bernabe de Guzman, Ramon Fernandez, Emiliano T. Tirona, Antero Soriano, Juan B. Alegre, Vicente de Vera, Jose Ma. Arroyo, Francisco Enage, Jose Gomez, Sergio Osmeña, Celestino Rodriguez, Francisco Soriano, Jose A. Clarin, Hadji Butu, Espiridion Guanco, Hermenegildo Villanueva, Jose Hontiveros, Teodoro Sandico, and Santiago Lucero, all members of the Philippine Senate; Faustino Aguilar, Secretary of the Philippine Senate; Bernabe Bustamante, Sergeant-at-ams of the Philippine Senate, and Francisco Dayaw, Paymaster of the Philippine Senate.

The *casus belli* is a resolution adopted by the Philippine Senate composed of the respondent Senators, on February 5, 1924, depriving Senator Alejandrino of all the prerogatives, privileges, and emoluments of his office for the period of one year from the first of January, 1924. The resolution reads as follows:

"*Resolved*: That the Honorable Jose Alejandrino, Senator for the Twelfth District, be, as he is hereby, declared guilty of disorderly conduct and flagrant violation of the privileges of the Senate for having treacherously assaulted the Honorable Vicente de Vera, Senator for the Sixth District on the occasion of certain phrases being uttered by the latter in the course of the debate regarding the credentials of said Mr. Alejandrino;

"*Resolved, further*: That the Honorable Jose Alejandrino be, as he is hereby, deprived of all of his prerogatives, privileges and emoluments as such Senator during one year from the first of January, nineteen hundred and twenty-four;

"*And resolved, lastly*: That the said Honorable Jose Alejandrino, being a Senator appointed by the Governor-General of these Islands, a copy of this resolution be furnished said Governor-General for his information."

The burden of petitioner's complaint is that the resolution above quoted is unconstitutional and entirely of no effect, for five reasons. He prays the court: (1) To issue a preliminary injunction against the respondents enjoining them from executing the resolution; (2) to declare the aforesaid resolution of the Senate null and void; and (3) as a consequence of the foregoing, to issue a final writ of mandamus and injunction against the respondents ordering them to recognize the rights of the petitioner to exercise his office as Senator and that he enjoy all of his prerogatives, privileges, and emoluments, and prohibiting them from preventing the petitioner from exercising the rights of his office, and from carrying the order of suspension into effect. By special appearance, the Attorney-General, in representation of the respondents, has objected to the jurisdiction of the court, and later, by demurrer, has pressed the same point.

In order that an obvious angle to the case may not subsequently embarrass us, we desire first of all to say that looking through the form of the action to the substance, this is, in effect, a suit instituted by one member of the Philippine Senate against the Philippine Senate and certain of its official employees. May the Supreme Court of the Philippine Islands by mandamus and injunction an-

nul the suspension of Senator Alejandrino and compel the Philippine Senate to reinstate him in his official position? Without, therefore, at this time discussing any of the other interesting questions which have been raised and argued, we proceed at once to resolve the issue here suggested.

There are certain basic principles which lie at the foundation of the Government of the Philippine Islands, which are familiar to students of public law. It is here only necessary to recall that under our system of government, each of the three departments is distinct and not directly subject to the control of another department. The power to control is the power to abrogate and the power to abrogate is the power to usurp. Each department may, nevertheless, indirectly restrain the others.

It is peculiarly the duty of the judiciary to say what the law is, to enforce the Constitution, and to decide whether the proper constitutional sphere of a department has been transcended. The courts must determine the validity of legislative enactments as well as the legality of all private and official acts. To this extent, do the courts restrain the other departments.

With these sound premises in mind, we are not at all surprised to find the general rule of mandamus to be, that the writ will not lie from one branch of the government to a coordinate branch, for the very obvious reason that neither is inferior to the other. Mandamus will not lie against the legislative body, its members, or its officers, to compel the performance of duties purely legislative in their character which therefore pertain to their legislative functions and over which they have exclusive control. The courts cannot dictate action in this respect without a gross usurpation of power. So it

has been held that where a member has been expelled by the legislative body, the courts have no power, irrespective of whether the expulsion was right or wrong, to issue a mandate to compel his reinstatement. (Code of Civil Procedure, secs. 222, 515; 18 R. C. L., 186, 187; Cooley, Constitutional Limitations, 190; French *vs.* Senate [1905], 146 Cal., Hiss *vs.* Bartlett [1855], 69 Mass., 468; *Ex parte* Echols [1886], 39 Al., 698; State vs. Bolte [1889], 151 Mo., 362; De Diego *vs.* House of Delegates [1904], 5 Porto Rico, 235; Greenwood Cemetery Land Co. *vs.* Routt [1892], 17 Colo., 156; State *ex rel.* Cranmer *vs.* Thorson [1896], 33 L. R. A., 582; Peopel *ex rel.* Billings *vs.* Bissel [1857], 19 Ill., 229; People *ex rel.* Bruce *vs.* Bunne [1913], 258 Ill., 441; People *ex rel.* La Chicote *vs.* Best [1907], 187 N. Y., Abueva *vs.* Wood [1924], 22 Off. Gaz., 667.)

The authorities which support the doctrines above announced are numerous and instructive. They are found among the decisions of our own court, of the United States Supreme Court, and of other jurisdictions. If some of these cases relate to the chief executive rather than to the legislature, it is only necessary to explain that the same rules which govern the relations of the courts to the chief executive likewise govern the relations of courts to the legislature.

The controlling case in this jurisdiction on the subject is Severino *vs.* Governor-General [1910], 16 Phil., 366). This was an original application made in this court praying for a writ of mandamus to the Governor-General to compel him to call a special election as provided by law. The Attorney-General demurred to the petition on the ground of lack of jurisdiction, and the court, after an elaborate discussion, reached the conclusion that "we have no jurisdiction to interfere with the Governor-

General of these Islands, as the head of the executive department, in the performance of any of his official acts." The demurrer was accordingly sustained and the complaint dismissed. It is noted that in this decision reliance was placed on the cases of State of Mississippi *vs.* Johnson ([1867], 4 Wall., 475), and Sutherland vs. Governor ([1874], 29 Mich., 320), which we will now proceed to notice.

State of Mississippi *vs.* Andrew Johnson, President of the United States, *supra*, concerned a bill praying the United States Supreme Court to enjoin and restrain Andrew Johnson, President of the United States, and E. O. C. Ord, General Commanding in the District of Mississippi and Arkansas from executing certain Acts of Congress. Mr. Chief Justice Chase delivering the opinion of the court said the single point which required consideration was this: Can the President be restrained by injunction from carrying into effect an Act of Congress alleged to be unconstitutional? He continued:

"The Congress is the Legislative Department of the Government; the President is the Executive Department. *Neither can be restrained in its action by the Judicial Department; though the acts of both, when performed, are, in proper cases, subject to its cognizance.*

"*The impropriety of such interference will be clearly seen upon consideration of its possible consequences.*

"*Suppose the bill filed and the injunction prayed for allowed. If the President refuses obedience, it is needless to observe that court is without power to enforce its process. If, on other hand, the President complies with the order of the court and refuses to execute the Acts of Congress, is it not clear that a collision may occur between the Executive and Legislative Departments of the Government?* May

not the House of Representatives impeach the President for such refusal? And in that case could this court interfere in behalf of the President, thus endangered by compliance with its mandate, and restrain by injunction the Senate of the United States from sitting as a court of impeachment? Would the strange spectacle be offered to the public wonder of an attempt by this court to arrest proceedings in that court?

"These questions answer themselves.

* * * * * * *

"We are fully satisfied that this court has no jurisdiction of a bill to enjoin the President in the performance of his official duties; and that no such bill ought to be received by us.

"It has been suggested that the bill contains a prayer that, if the relief sought cannot be had against Andrew Johnson, as President, it may be granted against Andrew Johnson as a citizen of Tennessee. But it is plain that relief as against the execution of an act of Congress by Andrew Johnson, is relief against its execution by the President."

Sutherland *vs.* Governor of Michigan, *supra*, well known to the legal fraternity on account of being written by Judge Cooley, related to an application for mandamus to the Governor to compel him to perform a duty imposed upon him by statute. Judge Cooley, in part, said:

"Our government is one whose powers have been carefully apportioned between three distinct departments, which emanate alike from the people, have their powers alike limited and defined by the constitution, are of equal dignity, and within their respective spheres of action equally independent.

* * * * * * *

"It is true that neither of the departments can operate in all respects independently of the others,

and that what are called checks and balances of government constitute each a restraint upon the rest. * * * But in each of these cases the action of the department which controls, modifies, or in any manner influences that of another, is had strictly within its own sphere, and for that reason gives no occasion for conflict, controversy or jealousy. The Legislature in prescribing rules for the courts, is acting within its proper province in making laws, while the courts, in declining to enforce an unconstitutional law, are in like manner acting within their proper province, because they are only applying that which is law to the controversies in which they are called upon to give judgment. It is mainly by means of these checks and balances that the officers of the several departments are kept within their jurisdiction, and if they are disregarded in any case, and power is usurped or abused, the remedy is by impeachment, and not by another department of the government attempting to correct the wrong by asserting a superior authority over that which by the constitution is its equal.

"It has long been a maxim in this country that the Legislature cannot dictate to the courts what their judgments shall be, or set aside or alter such judgments after they have been rendered. If it could, constitutional liberty would cease to exist; and if the Legislature could in like manner override executive action also, the government would become only a despotism under popular forms. *On the other hand it would be readily conceded that no court can compel the Legislature* to make or refrain from making laws, or to meet or adjourn at its command, or *to take any action whatsoever, though the duty to take it be made ever so clear by the constitution or the laws.* In these cases the exemption of the one department from the control of the other is not only implied in the framework of government,

but is indispensably necessary if any useful apportionment of power is to exist.

* * * * * * *

"It is not attempted to be disguised on the part of the relators that any other course than that which leaves the head of the executive department to act independently in the discharge of his duties might possibly lead to unseemly conflicts, if not to something worse, should the courts undertake to enforce their mandates and the executive refuse to obey. * * * And while we should concede, if jurisdiction was plainly vested in us, the inability to enforce our judgment would be no sufficient reason for failing to pronounce it, especially against an officer who would be presumed ready and anxious in all cases to render obedience to the law, yet in a case where jurisdiction is involved in doubt it is not consistent with the dignity of the court to pronounce judgments which may be disregarded with impunity, nor with that of the executive to place him in position where, in a matter within his own province, he must act contrary to his judgment, or stand convicted of a disregard of the laws."

We only take space to notice one more case, which concerns specifically the right of the judiciary to control by mandamus the action of the legislature. French *vs.* Senate of the State of California, *supra*, was an original proceeding in mandamus brought by the petitioners who were duly elected senators of the state to compel the Senate of California to admit them as members thereof. It was alleged that the petitioners had been expelled without hearing or opportunity for defense. The writ was denied, Mr. Justice Show delivering the opinion of the court, saying:

"Even if we should give these allegations their fullest force in favor of the pleader, they do not

make a case justifying the interposition of this court. *Under our form of government the judicial department has no power to revise even the most arbitrary and unfair action of the legislative department, or of either house thereof, taken in pursuance of the power committed exclusively to that department by the Constitution.* * * *"

There can be noted as specific corroborative authority, State *vs.* Bolte, *supra,* Abueva *vs.* Wood, *supra,* and Commonwealth of Massachusetts *vs.* Mellon, Secretary of the Treasury ([1923], 262 U. S., 447), the latest expression of opinion by the United States Supreme Court. The record discloses that it was the firm opinion of our late Chief Justice that the court should not assume jurisdiction of the proceedings.

So as to be perfectly fair to the petitioner, it is but proper to state that the principles laid down in some of the preceding authorities have been the subject of adverse criticism. It is said that the fallacy of the argument lies in the statement that the three departments of the government are independent of each other. "They are independent in so far as they proceed within their legitimate province and perform the duties that the law requires; yet it has never been held that the executive was the sole judge of what duties the law imposes upon him, or the manner in which duties shall be exercised. The final arbiter in cases of dispute is the judiciary, and to this extent at least the executive department may be said to be dependent upon and subordinate to the judiciary. * * * It is not the office of the person to whom the writ of mandamus is directed, but the nature of the thing to be done, by which the propriety of issuing a mandamus is to be determined." (2 Bailey on Mandamus, pp. 926-927.) But these were arguments which should have been

presented years ago in this court, and which when recently presented by counsel in his argument for the petition in the case of Perfecto *vs.* Wood, No. 20867, met with no favorable response from the court. It is now too late to go back and revise previous decisions and overturn them; in fact this would be not only impracticable but impossible since at least two decisions of the United States Supreme Court seem to us to be controlling.

No court has ever held and we apprenhend no court will ever hold that it possesses the power to direct the Chief Executive or the Legislature or a branch thereof to take any particular action. If a court should ever be so rash as to thus trench on the domain of either of the other departments, it will be the end of popular government as we know it in democracies.

It is intimated rather faintly that, conceding all that is said with reference to the right of the Supreme Court to issue mandamus directed to the Philippine Senate, yet we would be justified in having our mandate run not against the Philippine Senate or against the President of the Philippine Senate and his fellow Senators but against the secretary, the sergeant-at-arms, and the disbursing officer of the Senate. But this begs the question. If we have no authority to control the Philippine Senate, we have no authority to control the actions of subordinate employees acting under the direction of the Senate. The secretary, sergeant-at-arms, and disbursing officer of the Senate are mere agents of the Senate who cannot act independently of the will of that body. Should the Court do as requested, we might have the spectacle presented of the court ordering the secretary, the sergeant-at-arms, and the disbursing officer of the Philippine Senate to do one thing, and the Philippine Senate ordering them to do an-

other thing. The writ of mandamus should not be granted unless it clearly appears that the person to whom it is directed has the absolute power to execute it. (Turnbull vs. Giddings [1893], 95 Mich., 314; Abueva *vs.* Wood, *supra.*)

The question of jurisdiction is invariably one of perplexing difficulty. On the one hand, no consideration of policy or convenience should induce this court to exercise a power that does not belong to it. On the other hand, no consideration of policy or convenience should induce this court to surrender a power which it is its duty to exercise. But certainly mandamus should never issue from this court where it will not proved to be effectual and beneficial. It should not be awarded where it will create discord and confusion. It should not be awarded where mischievous consequences are likely to follow. Judgment should not be pronounced which might possibly lead to unseemly conflicts or which might be disregarded with impunity. This court should offer no means by a decision for any possible collision between it as the highest court in the Philippines and the Philippine Senate as a branch of a coordinate department, or between the Court and the Chief Executive or the Chief Executive and the Legislature.

On the merits of the controversy, we will only say this: The Organic Act authorizes the Governor-General of the Philippine Islands to appoint two senators and nine representatives to represent the non-Christian regions in the Philippine Legislature. These senators and representatives "hold office until removed by the Governor-General". (Organic Act, secs. 16, 17.) They may not be removed by the Philippine Legislature. However, to the Senate and the House of Representatives, respectively, is granted the power to "punish its

members for disorderly behavior, and, with the concurrence of two-thirds, expel an elective member." (Organic Act, sec. 18.) Either House may thus punish an appointive member for disorderly behavior. Neither House may expel an appointive member for any reason. As to whether the power to "suspend" is then included in the power to "punish", a power granted to the two Houses of the Legislature by the Constitution, or in the power to "remove," a power granted to the Governor-General by the Constitution, it would appear that neither is the correct hypothesis. The Constitution has purposely withheld from the two Houses of the Legislature and the Governor-General alike the power to suspend an appointive member of the Legislature.

It is noteworthy that the Congress of the United States has not in all its long history suspended a member. And the reason is obvious. Punishment by way of reprimand or fine vindicates the outraged dignity of the House without depriving the constituency of representation; expulsion, when permissible, likewise vindicates the honor of the legislative body while giving to the constituency an opportunity to elect anew; but suspension deprives the electoral district of representation without that district being afforded any means by which to fill the vacancy. By suspension, the seat remains filled but the occupant is silenced. Suspension for one year is equivalent to qualified expulsion or removal.

It is beyond the power of any branch of the Government of the Philippine Islands to exercise its functions in any other way than that prescribed by the Organic Law or by local laws which conform to the Organic Law. This was, in effect, our holding in the comparatively recent case of Concepcion *vs.* Paredes ([1921], 42 Phil., 599), when we

had under particular consideration a legislative attempt to deprive the Chief Executive of his constitutional power of appointment. What was there announced is equally applicable to the instant proceedings.

While what has just been said may be unnecessary for a correct decision, it is inserted so that the vital question argued with so much ability may not pass entirely unnoticed, and so that there may be at least an indication of the attitude of the court as a restraining force, with respect to the checks and balances of government. The Supreme Court, out of respect for the Upper House of a coordinate branch of the Government, takes no affirmative action. But the perfection of the entire system suggests the thought that no action should be taken elsewhere which would constitute, or even seem to constitute, disregard for the Constitution.

Conceding therefore that the power of the Senate to punish its members for disorderly behavior does not authorize it to suspend an appointive member from the exercise of his office for one year, conceding what has been so well stated by the learned counsel for the petitioner, conceding all this and more, yet the writ prayed for cannot issue, for the all-conclusive reason that the Supreme Court does not possess the power of coercion to make the Philippine Senate take any particular action. If it be said that this conclusion leaves the petitioner without a remedy, the answer is that the judiciary is not the repository of all wisdom and all power. It would hardly be becoming for the judiciary to assume the role of either a credulous inquisitor, a querulous censor, or a jaunty knight, who passes down the halls of legislation and of administration giving heed to those who have grievances against the Legislature and the Chief Executive.

We rule that neither the Philippine Legislature nor a branch thereof can be directly controlled in the exercise of their legislative powers by any judicial process. The court accordingly lacks jurisdiction to consider the petition and the demurrer must be sustained. As it is unlikely that the petition could be amended to state a cause of action, it must be dismissed without costs. Such is the judgment of the court.

It is so ordered.

(Sgd.) GEO. A. MALCOLM

WE CONCUR:

(Sgd.) THOS. A. STREET
" IGNACIO VILLAMOR
" NORBERTO ROMUALDEZ

AVANCEÑA, *J.*, concurring:

I agree with the dispositive part and the grounds and considerations set forth in the decision about the want of jurisdiction of this court to review the proceeding of the Senate. But, this court having no jurisdiction, the insinuation contained in the decision that that proceeding of the Senate was illegal seems to me unnecessary and improper.

(Sgd.) RAMON AVANCEÑA

JOHNSON, *J.*, dissenting:

Among the important questions presented by the petition and demurrer in the present case, three may be mentioned:

First. Is the resolution in question legal or illegal?

Second. Has the Supreme Court jurisdiction even to consider its legality?

Third. Can the Supreme Court grant the remedy prayed for?

FIRST. *Legality of the resolution*

The Supreme Court is unanimous in its opinion

that the resolution, by which Jose Alejandrino was deprived of "all his prerogatives, privileges, and emoluments for the period of one year" as an appointed senator, is an expulsion or removal of him as such senator and therefore illegal and *ultra vires* for the reason that the power of expulsion or removal of an appointed senator is vested exclusively in the Governor-General of the Philippine Islands. (Section 17 of the Jones Law—Act of Congress of August 29, 1916—Public Laws, vol. 12, p. 243.)

By reason of the unanimous opinion upon that question, it becomes unnecessary further to discuss it except to give the particular reasons which induced my opinion. Said section 17 provides that: "Senators and representatives appointed by the Governor-General shall hold office until *removed* by the Governor-General." Section 18 provides, among other things, that "each house may determine the rules of its procedings, *punish* its members for disorderly behavior, and, with the concurrence of two-thirds, expel an *elective* member." The petitioner is an appointive member of the Senate.

It will be noted from the two quotations just given, that the power to *expel*, a member of either branch of the Legislature, by the Legislature, is limited to "elective members," while the power "to punish members for disorderly behavior" applies to all members whether elective or appointive. In view of the facts that neither branch of the Legislature can expel an appointive member, can either branch deprive such a member of all his "prerogatives, privileges and emoluments for the period of one year" under the power "to punish for disorderly behavior"? It will be noted that the law contains no definition of the "punishment" which may be imposed for disorderly behavior. Considering, however, that neither branch has the right expel an

appointive member, certainly no one will contend that the punishment imposed for disorderly behavior may amount to an expulsion. If the punishment amounts to an expulsion then certainly the Legislature has exceeded its authority and has encroached upon the power of the executive, for the reason that the power to expel belongs to the Governor-General.

We have, then, the question squarely presented, whether or not a resolution of the Senate of the Philippine Islands which deprives an appointed senator of all his "prerogatives, privileges, and emoluments for the period of one year" amounts to an expulsion. If it does, then the resolution is illegal, null, and void, and beyond the powers of the legislative department of the Government and an unwarranted exercise of the powers which belong to the Governor-General.

The said resolution not only *deprives* the petitioner of all his "prerogatives, privileges and emoluments for the period of one year" but also *deprives the people of his district*, composed of about one million persons, of any representation or participation in the legislative affairs of the government for a period of one year,—a right which is guaranteed to them under the constitution. Such a result was certainly not contemplated by the provisions of the Jones Law. Certainly the framers of the constitution of the Philippine Islands never dreamed that when the Legislature of the Philippine Islands was given the power to "punish" its members for misbehavior, that such a power would ever be used as a guise for "expelling" an appointive member.

The power to punish for misbehavior was intended purely as a disciplinary measure. When a member of the Legislature is removed either by the

Governor-General or by the Legislature, a vacancy exists, and the law gives the Governor-General the right to appoint, and the people of the district the right to fill the vacancy by election, so that the people may again, under either case, be represented. A "suspension" of a member, however, does not create a vacancy, and the people of the district are without a representative and the Governor-General cannot appoint one and the people cannot elect one during the period of suspension. They are without representation during that period. They are, for the period of suspension, taxed without representation. If a member, under the power to punish, can be suspended for one year, for the same reason he may be suspended for ten or more years, thus depriving the Governor-General of his right under the law, and the people of the district, of a representative, and without remedy in the premises.

If the power "to punish for disorderly behavior" includes the power to suspend or to deprive a member of all his rights, and if the suspension is in effect a removal, then an appointed member may be removed, under the power to punish, by a mere majority, while the law requires a two-thirds majority to remove an elective member. In other words, if under the power to "punish," any member of the Legislature, including an appointive member, may be in effect removed, then an elective member may be removed by a majority vote only, thus encroaching upon the power of the executive department of the government, as well as violating the powers conferred upon the Legislature, because the Legislature cannot remove an elective member except by two-thirds majority.

It is strenuously argued by the respondents that the resolution depriving the petitioner "of all his prerogatives, privileges and emoluments for the period

of one year" is not a removal from his office but a mere suspension. The resolution does not use the word "suspend" but *does* use the word "deprive." It provides that the petitioner is "deprived" of all his prerogatives, etc., for a period of one year. If that word means anything it means that all of the prerogatives, privileges, and emoluments of the petitioner and the citizens whom he represents have been taken from him and them. His prerogatives, privileges, and emoluments constitute his right to be a member of the Senate under his appointment, his right to represent the people of his district, and his right to exercise all the duties and to assume all the responsibilities pertaining to his office. His emoluments constitute his right to receive his salary and the benefits pertaining to his office as a senator. If a value can be placed upon his prerogatives, privileges, and emoluments, and if he has been deprived of them, then it must follow that they have been removed from him, or that he has been removed from them. At any rate, the resolution has separated the petitioner and the people whom he represents and deprived them of all of their prerogatives, privileges, and emoluments for the period of one year; and, for all intents and purposes, he and the people whom he represents, have been deprived of their prerogatives, privileges, and emoluments, and in effect, have been removed from any participation in the legislative affairs of the government.

A great many cases have been studied on the question of removal and suspension, and we are confident in the assertion that the power to punish does not include the power to remove or suspend. A suspension from an office or a deprivation of the rights of an officer of all his prerogatives, privileges, and emoluments, is in effect a deprivation or a removal from office for the time mentioned in the order of suspension. It has been held that a

suspension from office for an indefinite time and lasting for a period of six months, lost its temporary character, ceased to be a suspension, and in effect became a removal from such office. It was held, in the case of State *vs.* Chamber of Commerce, that the suspension of a member was a qualified expulsion, and that whether it was called a suspension or expulsion or removal, it in effect disfranchised the person suspended. In the case of Metsker *vs.* Nelly, it was held that a *suspension or a deprivation* for either a definite or indefinite period is in effect a removal. In the case of Gregory *vs.* New York it was held that the power to remove an officer or punish him does not include the power to suspend him temporarily from his office. A mere suspension would not create a vacancy, and the anomalous and unfortunate condition would exist of an office,—an officer—but no vacancy, and of no one whose right and duty it was to execute the office. In the case of Commonwealth *vs.* Barry it was decided that to punish an officer for "disorderly behavior" such misbehavior must be such as affects the performance of his duties or the legal or ordinary procedure of the body of which he is a member, and not disorderly behavior which affects his character as a private individual.

In this connection it may be noted that the alleged "misbehavior" on the part of the petitioner was committed outside of the legislative halls and at a time when there was no session of the Senate; that said alleged "misbehavior" did not take place in or near the Senate chamber, nor cause any disorder, disturbance, annoyance, or impediment whatever to the orderly and dignified procedure of any session of the Senate; that said "misbehavior" did not interfere in any manner whatever with the honor, dignity, and efficiency, nor with orderly proceedings of the Senate; that the petitioner did

not know, at the time of the alleged "misbehavior," that he had been admitted as a member of the Philippine Senate. The question of his admission as a senator had been under discussion for weeks theretofore.

Paragraph 2 of section 5 of the Constitution of the United States provides that "each house may determine the rules of its proceedings, punish its members for disorderly behavior, and, with the concurrence of two-thirds, expel a member." That provision of the Constitution of the United States is exactly the language used in section 18 of the Jones Law, with the only difference that the phrase "expel a member" in the Constitution is changed in the Jones Law to "expel an elective member." That provision of the Constitution of the United States has been enforced for a period of about one hundred forty years. It will be noted that said provision of the Constitution of the United States contains 2 provisions: (*a*) to punish and (*b*) to expel.

An examination of the long history of the Congress of the United States has been made for the purpose of ascertaining how that august body has interpreted its powers under said provisions. First, it may be said that the Congress of the United States is perhaps as dignified a legislative body as that of any of the states or territories of the United States. Its records have been searched upon the question of its power to punish and remove its members and no case has been found—and it is believed there are none—where Congress, under its power to *punish*, has attempted to deprive a member of all his rights, prerogatives, privileges, and emoluments for anytime whatever, although many cases of removal have been found under that power to remove. The power to punish for disorderly behavior has never been exercised further than to

impose a mere reprimand. We regard the fact that the Congress of the United States has never exercised its power, to *punish* for disorderly behavior, by depriving a member of all of his rights, prerogatives, privileges, and emoluments, as strong proof that it did not believe that its power to *punish* justified an order or resolution depriving a member of all of his rights, prerogatives, privileges, and emoluments. Many cases might be cited showing misbehavior of much more serious character than that charged against the petitioner and where a reprimand only was imposed.

SECOND. *Jurisdiction to consider question*

Whether or not the the courts will take jurisdiction of any action whatever to interfere with, direct or control the action of either the executive or legislative departments of the government, is a question which has been presented to the courts many times since the leading case of Marbury *vs.* Madison was decided ([1803], 1 Cranch [U. S.], 137). In hundreds of cases which have come before the courts since that time,the decisions have been about equally divided. One line of decisions indicates that the courts will never take jurisdiction to control, order, or direct either the executive or legislative departments of the government to perform or not to perform any *particular act expressly imposed upon or confided to them* either by the organic act or by statute. (State of Mississippi *vs.* Johnson, 4 Wall. [U. S.], 475; Sutherland vs. Governor, 29 Mich., 320; Hawkins *vs.* Governor, 1 Ark., 570; People *vs.* Bissell, 19 Ill., 229; State *vs.* Governor, 22 La Ann., 1; Rice; *vs.* Governor, 27 Minn., 1; Vicksburg & Co. *vs.* Governor, 61 Miss., 102.)

The other line of decisions holds that the courts will take jurisdiction to control, order and direct both the executive and legislative departments of

the government to do and to perform what are generally termed *purely ministerial duties imposed by either the organic act or by statute.* Tennesse & Railway *vs.* Governor, 36 Ala., 171; Middleton *vs.* Governor, 30 Cal., 596; State *vs.* Governor, 72 Ind., 567; State *vs.* Governor, 5 Ohio State, 528.)

It is here confidently asserted that a careful study of the first line of decisions will show, that each case might have been decided upon the ground that the duty, the performance of which was sought to be coerced, was one which was either a *discretionary or official* duty of the respondent, and that the doctrine relied upon, as announced in said cases, was purely *obiter dicta;* that each of the first line of cases might have decided upon the ground that the performance of the particular acts was entirely within the discretion or official duty of the respondent and a question confided solely to them.

From an examination of all the cases upon the question before us, the following rule of law is accepted as the *general* rule:

"That the executive, legislative, and judicial departments of the government are distinct and independent, and neither is responsible to the other for the performance of its duties and neither can enforce the performance of the duties of the other." Exceptions or modifications of this general rule will be noted later.

After a carefull study of all the cases on the subject, we are of the opinion that a fair *summary* of the power of the courts in the premises may be stated under two heads as follows:

First. *That the courts have jurisdiction to examine acts "actually" taken by the executive or legislative departments of the government when such acts affect the rights, privileges, property, or lives of individuals.*

Second. *That the courts will not take jurisdiction to order, coerce, or enjoin any act or acts of either the executive or legislative departments of the government upon any question or questions, the performance of which is confided by law to said departments. The courts will not take jurisdiction until some positive "action" is taken by the other coordinate Departments of the Government.*

With reference to the first proposition, we desire to say that, while the courts hesitate, and rightfully so, to inquire into the legality of the acts of the executive or legislative departments of Government, yet they are *without discretion* in the premises in cases where it is alleged that a person is illegally deprived of his life, liberty, or property by said departments. The law makes no distinction with reference to the person or persons, or departments or bureaus who are responsible for the illegal and unlawful deprivation of the right of individuals in the state. The mere fact that such alleged illegal deprivation of life, liberty, or property is caused by the chief executive or the legislative department of the government, in the face of mandatory provisions of the law, *is no sufficient excuse or justification* for a refusal on the part of the courts to take jurisdiction for the purpose of *inquiring* into such alleged illegal deprivation and to make pronouncement thereon. Under the system of checks and balances, by virtue of the existence of the different departments of the government, in the Government of the United States and its territories, it becomes the legal and bounden duty of the courts to inquire into the legality, when called upon so to do, of the acts of either of the other departments of the government and to make pronouncements thereon. (Barcelon *vs.* Baker, 5 Phil., 87; Forbes *vs.* Chuoco Tiaco and Crossfield, 16 Phil., 534 [228 U. S., 549]; *In re* McCoulloch Dick, 38 Phil., 41, 211, 224; Bor-

romeo *vs.* Mariano, 41 Phil., 322; U. S. *vs.* Joson, 26 Phil., 1, 65; U. S. *vs.* Ten Yu, 24 Phil., 1, 10; Case *vs.* Board of Health, 24 Phil., 250, 276; U. S. *vs.* Gomez Jesus, 31 Phil., 218.)

There is no more *sacred duty* of the courts, when a case is presented to them in which the life, liberty or property of the citizens of the state are involved, than that of maintaining, unimpaired, those securities for the personal rights of the individuals of the state which have been guaranteed to them by the organic law of the land and which have received for ages the sanction of the jurists and the states-men of the civilized nations of the world. In such cases no narrow or illiberal construction should be given to the language of the fundamental law of the state. (*Ex parte* Lang, 85 U. S., 163.)

Since the Constitution of the Philippine Islands is intended for the observance of the judiciary as well as the other departments of the government, and the judges are sworn to support its provisions, they are not at liberty to overpass by a summary command, and therefore to work it is clear that a statute or resolution of the Legislature [illegible] ses the authority vested by the Constitution in the Legislature, it is the duty of the courts to declare the acts or resolutions unconstitutional, and from that duty the courts cannot shrink without violating their oath of office. (United States *vs.* Fisher, 2 Cranch [U. S.], 396; Dartmouth College *vs.* Woodward, 4 Wheaton [U. S.], 518; Green *vs.* Biddle, 8 Wheaton [U. S.], 1.)

The duty of the courts to declare a law or resolution unconstitutional, in a proper case, cannot be declined and must be performed in accordance with the deliberate judgment of the court. (Pollock *vs.* Farmer's Loan & Trust Co., 157 U. S., 429.)

Since the question as the constitutionality of a statute or resolution of the legislature is a judicial matter, the courts will not decline to exercise jurisdiction upon the mere suggestion that some action might be taken by the political agencies of the government in disregard of the judgment of the court. **(McPherson vs. Blacker, 146 U. S., 869.)**

The doctrine of the all omnipotent power of the legislature as recognized by the Government of England, does not prevail in the United States, and every law or resolution adopted by the legislative department of the government must conform to the constitution. When a statute or a resolution of the legislative department exceeds the jurisdiction and powers of the legislature, it is null and void.

The principle which permits courts to pronounce an act or resolution of the legislature null and void, because it conflicts with the provisions of the constitution, is a doctrine so well established under constitutional governments that it seems [illegible]

s; to adjudge. Any other course would lead to the destruction of the fundamental law of the state. It has been said by eminent jurists and authorities that the judiciary should protect the rights of the people with great care and jealously, not only because it is its sworn duty, but also because in times of great popular excitement the courts are the last resort. (Gardner *vs.* Stephens, 2 Am. Rep., 700; State *vs.* Peel Splint Co., 17 L. R. A., 385; Rathbone *vs.* Wirth, 34 L. R. A., 408; Wells *vs.* Mo. Railway Co., 15 L. R. A., 847; State *vs.* Butler, 24 L. R. A., [N. S.], 744; Sanders *vs.* Commonwealth, 111 Am. State Rep., 219; State *vs.* Miller, 87 Ohio State, 12; Miller *vs.* Johnson, 15 L. R. A., 524.)

The right and power of the courts to declare whether enactments of the legislature exceed the constitutional limitations and are invalid, has always been considered a grave responsibility as well as a solemn duty, and its exercise is, at all times, a matter of much delicacy, for, apart from the necessity of avoiding conflicts between the branches of the government, it is often a question of difficulty of the government, it is often a question of difficulty whether such enactments are within the powers granted to or possessed by the legislature. It has also been said that the power of the courts to nullify acts of the legislature, as being in violation of the constitution, is one of the highest functions and authorities of the courts. (Nichol *vs.* Ames, 173 U. S. 509; People *vs.* Hamilton Co., 180 Ill. 554; Edwards *vs.* Lesueur, 34 L. R. A., 415.)

The courts have no jurisdiction to nullify or [illegible] which have been entrusted to the executive or legislative departments of the government, nor the power to interfere with the duties of either of said departments, unless under special circumstances and when it becomes necessary for the protection of the rights, the life and

the property of the individuals of the state. (*In re* Sawyer, 124 U. S., 200; Luther *vs.* Borden, 7 Howard [U. S.], 1; Mississippi *vs.* Johnson, 4 Wall. [U. S.] 475.)

The jurisdiction of the courts over the acts of either of the other departments is limited to cases where the *acts* of such departments tend to deprive the citizens of their rights, liberties and property. To assume jurisdiction to control the exercise of purely political rights, would be to invade the domain of the other departments of the government. (Fletcher *vs.* Tutle, 151 I[ll., 41.)

We do not desire to be understood, however, as holding that even *political* rights are not a matter of judicial solicitud and protection and that the appropriate judicial tribunal will not, in a proper case, give a prompt and efficient protection to citizens. (Muskrat *vs.* United States, 219 U. S., 346.)

In the case of Burnham *vs.* Morrisey (14 Gray [Mass.], 262), Mr. Justice Hoar, later a United States Senator, [illegible] House of Representatives [illegible]s own powers and privileges, in cases where the rights and liberties of the citizens are concerned, *the legality of its action may be examined into and determined by the courts.* Especially is it competent and proper for the courts to consider whether [illegible] (legislature) proceedings are in conformity with the constitution and laws, because under constitution no branch [illegible] government is supreme; and it [illegible] of the *judicial department* [illegible] properly brought before them, whether the powers of any branch of the government [illegible] legislature in the enactment of laws [illegible] have been exercised in conformity with the constitution; and if they have not, to treat their acts as null and void. The House of

Representatives has the power, under the consitution, to imprison for contempt; but the power is limited to cases expressly provided for by the constitution, or to cases where the power is necessarily implied from those constitutional functions and duties, to the proper performance of which it is essential."

The doctrine of the omnipotence of either the executive or legislative department of government has long since been denied, and has no place under the American flag.

Of course, when a discretionary power is conferred, with the right to act or not to act, and when the discretion is honestly exercised and not abused, then the official or department is relieved from personal responsibility; *but when action is taken* and an individual of the state is thereby deprived, illegally, of his life, liberty or property, his remedy to be restored to his rights is properly submitted to the courts. In every case where the courts are called upon to exercise their original jurisdiction to question the illegality of action *already taken* by the legislative or executive department of the government, they will not do so upon a mere formal or colorable showing either as to the parties or subject-matter. The courts will look through the *form* to the *real character or substance of the alleged illegal act.* (Wisconsin *vs.* Insurance Co., 127 U. S., 265; Louisiana *vs.* Texas, 176 U. S., 1; Oklahoma *vs.* Railway Co., 220 U. S. 277.)

A statute or a resolution of the legislative department of the government which deprives a citizen of the rights guaranteed to him by the Organic Law of the land is null and void. (Harrison *vs.* Railway Co., 232 U. S., 318; Terral *vs.* Burke & Co., 257 U. S., 529.)

Decisions of the highest courts, without number,

may be cited in support of the rule "that all governmental officers, departments or agencies are subject to judicial restraint when they act *in excess* of their authority either statutory or constitutional, by virtue of which citizens are deprived of their rights." (Osborn *vs.* U. S. Bank, 9 Wheaton [U. S.], 739; Board of Liquidation *vs.* McComb, 92 U. S., 531; United States *vs.* Lee, 106, U. S., 196; Virginia Cases, 114 U. S., 311; Regan *vs.* Farmers & Co., 154 U. S., 362; Smith *vs.* Ames, 169 U. S., 466; *Ex parte* Young, 209 U. S., 123; Philadalphia Co. *vs.* Stimson, 223 U. S. 605.)

Checks and Balances

The three great departments of the government—the executive, legislative, and judicial—were created for the purpose of "checks and balances." Under the Organic Law of the Philippine Islands the executive power of the State is conferred upon the Governor-General. The legislative power is vested in the Senate and House of Representatives. The judicial power is vested in the courts. The three great branches of the government are separate and distinct, but are coequal and coordinate. Their powers have been carefully apportioned. The legislature makes the laws, the courts construe them and adjudge as to the rights of persons to life, liberty, and property thereunder, while the executive department executes the laws and the judgments of the courts. Each department, in its own sphere, is in a sense independent. Each operates as a check or restraint upon the other. The Acts of the legislative department have to be presented to the executive department for its approval. The executive department may disapprove the Acts of the legislature if in its judgment they are not in conformity with the organic law of the state or if in their enforcement they might work a hardship upon the

people. The judicial department is authorized to construe and interpret the Acts of the legislature. The judicial department is authorized to determine the validity of the Acts of the legislature under the constitution. The executive department may also set aside the judgments of the judicial department and modify the action of the courts by the interposition of its pardoning power. The legislative department may also recall, modify, or annul decisions of the courts if in its judgment the interpretation given to a law by the courts is not in harmony with the general policy of the state, by the enactment of a new *law* or by an *amendment* of the old, giving it such a nondisputed meaning and interpretation as to clearly wipe out the decisions of the judicial department.

Thus, we have the checks and balances known under the American form of government. But in every case in which one department controls, modifies, or influences the action of another, it acts strictly within its own sphere, thus giving occasion for conflict and thus preserving the purpose of the original scheme of a division of powers among the three great coordinate branches of government, each operating as a restraint upon the other, but still in harmony.

By the use of the power of veto and of pardoning, the executive department may annul and set aside absolutely the action of both the legislative and judicial departments. The legislative department may, by adopting a new law or by amendment or by passing a law over the veto of the executive department, annul, recall, and set aside the action of both the executive and judicial departments. But it must be observed that when the judicial department inquires into an act of either the executive or legislative departments for the purpose

of determining the legality of such acts, it is not because it desires to impose its own opinions upon such departments nor to examine into the wisdom or advisability of a particular act or statute, but simply because said departments have acted in a way which is forbidden by the fundamental law of the land and because the will of the people, as declared in such fundamental law, is paramount and must be obeyed even by the legislative and executive departments. In pronouncing a statute of the legislature illegal or an act of the executive department beyond its powers, the courts are simply interpreting the meaning, force and application of the fundamental law of the state.

If the doctrine that the different departments—executive, legislative, and judicial—are absolutely inrestrain, modify or annul, the action of the other, dependent and one can never interfere to control or then the very purpose of the organization of the three departments for "checks and balances" would be defeated. (Case *vs.* Board of Health, 24 Phil., 250; U. S. *vs.* Joson, 26 Phil., 1, 64; U. S. *vs.* Gomez Jesus, 31 Phil., 218, 225, 228; Tajanlañgit *vs.* Peñaranda, 37 Phil., 155; Central Capiz *vs.* Ramirez, 40 Phil., 883, 899; Severino *vs.* Governor-General, 16 Phil., 366; U. S. *vs.* Bull, 15 Phil., 7; Borromeo *vs.* Mariano, 41 Phil., 322; Concepción *vs.* Paredes, 42 Phil., 599; Marbury *vs.* Madison, 1 Cranch [U. S.], 137, 152, 170, 172.)

The following are among the leading cases in which the courts have taken jurisdiction for the purpose of determining the legality or illegality of *acts*, or orders or resolutions of the executive and legislative departments:

First. *Acts of the Executive Department of Government*—

(*a*) Barcelon *vs.* Baker (5 Phil., 87), where the ac-

tion of the Governor-General was pronounced legal;

(*b*) Forbes *vs.* Chuoco Tiaco and Crossfield (16 Phil., 534; 228 U. S., 549), where the action of the Governor-General was pronounced legal;

(*c*) *In re* McCulloch Dick (38 Phil., 41, 62, 63, 109, 211, 224), where the action of the Governor-General was pronounced legal;

(*d*) Borromeo *vs.* Mariano (41 Phil., 322) where the action of the Governor-General was pronounced illegal.

Second. *Acts of the Legislative Department of the Government—*

(*a*) Concepcion *vs.* Paredes (42 Phil., 519), where the act of legislative department was pronounced illegal;

(*b*) Kibourn *vs.* Thompson (103 U. S., 168, 181, 199), where the act of one branch of the Congress of the United States was held illegal.

Referring to the second "Summary of the Powers of the Courts" above it may be said that in this jurisdiction the doctrine is now well established, that, until the executive or legislative departments has taken some steps or has acted upon some question, the courts will neither undertake to compel action nor to restrain action in said departments. It is only when said departments have *acted* and their *acts* detrimentally affect the interest of the citizen, that the courts will inquire into the legality or constitutionality of such acts. (Barcelon *vs.* Baker, 5 Phil., 87; Forbes *vs.* Chuoco Tiaco and Crossfield, 16 Phil., 534; Borromeo *vs.* Mariano, 41 Phil., 322; Perfecto *vs.* Wood, R. G. No. 20867; Abueva *vs.* Wood, 22 Off. Gaz., 667.)

The judicial department of the government will not attempt to intervene or control or direct or command any action whatever upon any subject which

has been *specifically confided* by law to the other departments, until they have taken some action which tends to and does establish some theory or policy contrary to the organic law of the land, or has deprived some citizen of his life, liberty, property, or privilege granted to him by the organic law. Under such facts, the judicial department is, under the law, bound to take jurisdiction and to make pronouncements thereon. In such cases it becomes the legal and bounden duty of the courts to inquire into the legality or illegality of the acts of the other departments of the government and to declare what the law is and what the rights of the parties are. When such a case is presented to the courts, its responsibility to the people of the state, under the law, demands that a thorough investigation of the facts be made and of the rights of the parties under the law, and to make a pronouncement, without reference to the fact whether or not the courts have the proper machinery for the purpose of enforcing their conclusions and judgments.

The following are among the cases holding that the courts will not intervene for the purpose of compelling or directing any action on the part of the executive or legislative departments of the government with reference to any duty or obligation specifically confided to said departments:

First. *Acts of the Executive Department of the Government—*

(*a*) Severino *vs.* Governor-General, 16 Phil., 366;
(*b*) Abueva *vs.* Wood, 22 Off. Gaz., 667;
(*c*) Sutherland *vs.* Governor, 29 Mich., 320;
(*d*) Hawkins *vs.* Governor, 1 Ark., 570;
(*e*) People *vs.* Bissell, 19 Ill., 229.

Second. *Acts of the Legislative Department of the Government—*

Abueva *vs.* Wood, 22 Off. Gaz., 667.

In view of the foregoing arguments and citation of authorities and inasmuch as the petitioner alleges that by an *act* or *resolution* of the Senate of the Philippine Islands he has been deprived, of his prerogatives, privileges, and emoluments for a period of one year, which have been granted to him by the organic law of the land, through the officers and employees of the Senate, we are of the opinion, and so decide, that under such allegations the court is not only justified, but authorized and compelled under the duties and powers conferred upon it, to take jurisdiction of the petition for the purpose of examining into the question whether or not the petitioner has been deprived of any rights granted to him under the Constitution of the Philippine Islands.

Are the facts stated in the petition and admitted by the demurrer sufficient to constitute a cause of action, and do they justify the court in taking jurisdiction of the case?

The petitioner allges that he is a Senator of the Philippine Islands legally appointed by the Governor-General under the provisions of section 16 of the Jones Law; that by virtue of said appointment he is given all the rights of a senator, with all the prerogatives, privileges, and emoluments thereunto belonging; that he has, as such senator, the right to continue to serve the people of his district; that he has the right to be and act as a member of the Senate until removed by the Governor-General; that he has been deprived of the right to act as a senator and has been *removed* as such senator by the respondents and thereby deprived of a right conferred upon him by law and of all of the rights, prerogatives, privileges, and emoluments belonging to him as a citizen of the Philippine Islands and as a member of the Senate; that the citizens of his district have been deprived of their right to be represented and to participate in the affairs of their govern-

ment; that unless the said resolution of the Senate be pronounced illegal, null, and void, he will be unable to exercise the rights of a citizen and a senator and to enjoy the prerogatives, privileges, and emoluments to him rightfully belonging; that by becoming a member of the Senate he has *not* lost his rights as a citizen; that he is still entitled to be protected in all of his rights and privileges as a citizen under the law; that the punishment imposed by said resolution is one created after the alleged grounds for suspension had occurred; that the punishment imposed is quasi-criminal; that no punishment for his acts had been prescribed as is expressly provided under the substantive law of the Philippine Islands; that the punishment provided for in said resolution of the 5th day of February, 1924, was *ex post facto* and is illegal and void under section 3 of the Organic Law, in that his acts were pronounced to be illegal by said resolution long after they had been committed; that the respondents were without authority of law to remove him as a member of the Senate; that the Governor-General only has the authority to remove him; that the alleged acts for which he has been suspended were not committed in or near the Senate chamber; that they in no way tended to or did interfere with the orderly procedure of the Senate and therefore cannot be regarded as "disorderly behavior;" that the Senate has no right or authority to *suspend* or *remove* one of its members for disorderly behavior unless and until such disorderly behavior tends to and does interfere with, hamper or impede the legal and orderly procedure of the body; that while it requires a two thirds vote of the Senate to *expel* its elective members, he has been *removed*, contrary to law, by the Senate, when the Governor-General is the only authority who can remove him; that if the Senate can remove him under the power to punish,

then an appointive member can be removed by a majority vote, while it requires a two-thirds majority vote to *remove* an elective member; and, for all of the foregoing reasons, the petitioner and the people of his district have been deprived of their rights, privileges, prerogatives, and emoluments by an actual act or resolution of the Senate, which is contrary to law, and that he is entitled to have a pronouncement of his rights made by the courts and to be restored to his rights, prerogatives, privileges, and emoluments of which he has been so illegally deprived.

The Constitution of the Philippine Islands, the Organic Act (Jones Law) provides: "That no law shall be enacted which deprives any person of life, liberty or property without due process of law, or deny to any person therein the equal protection of the laws." That provision of law is equally binding upon each department of government. "Due process of law" cannot be used as a cloak for depriving a citizen of his rights when the procedure is based upon an illegal or unconstitutional act or resolution.

Under the American form of government, the executive, legislative, and judicial departments are coequal and coimportant. But it does not follow that the judiciary, the constitutional duty of which is to declare and interpret the supreme law of the land, has not the power to declare a law or a resolution, passed by the legislature or either of its branches, unconstitutional. The will of the people, as expressed in their constitution, is the paramount law and controls every and each department of the government. The judiciary, under its powers to interpret the constitution and the laws, has the duty and the right to declare what the will of the people is, as expressed in the fundamental law of the land. Hence, where the acts of the executive or legislative

department violate the will of the people as expressed in the organic law of the land, it is the sworn duty of the judiciary to interpret and to declare that the will of the people and the right of a citizen has been violated and transgressed.

While the imposition of a disciplinary measure by the legislature or either branch thereof upon one of its members for an offense committed against its dignity may be regarded as a matter of internal concern only of that body, over which the other departments may not exercise jurisdiction by virtue of the separation established by the fundamental law, it does not follow that the legislature, in imposing desciplinary measure, has not or may not overstep its own powers as limited or defined by the Organic Law. The legislative department of the government cannot, under the guise of a resolution imposing disciplinary measure, transgress the constitution, and when it does, its acts cease to be a mere internal concern. Even the members of the legislature have their rights under the Constitution. They have not lost the fundamental rights to their life, liberty, and privileges as citizens by becoming members of the legislative department of the government.

The argument of the respondents leads to the conclusion that under their power to punish they may impose any punishment which their wish, whim, prejudice, or caprice may dictate. That contention will hardly withstand the scrutiny of modern civilization.

The respondents defend upon the ground that they are absolutely immune from judicial inquiry; that the courts have no power or authority to inquire into the acts of the executive or legislative branches of the government, however clear it may be made to appear that such departments do not

possess the power [illegible] is evidently overlooked [illegible] of the Jones Law above quoted *is as binding upon them as it is upon any department,* bureau or person in the government. The provisions of the Jones Law, for the security of the *rights* of the citizens, stand in the same connection and upon the same ground as they do in regard to his *liberty* and his *property.* It cannot be denied that both were intended to be enforced by the judicial department of the government. As has been said, the writ of habeas corpus has been often used to defend the liberty of the citizen, and even his life, against the exercise of *unlawful authority* on the part of the executive and legislative branches of the government.

No man, individual, department, bureau, or officer in the Philippine Islands, under the Jones Law, is so high that he is above the law. No officer of the law may set that law at defiance with impunity. All officers of the government, from the hightest to the lowest, are creatures of the law, and are bound to obey it. The Philippine Government is a government by law and not a government by the whim or caprice of any individual or department. It (the law) is the only supreme power in our system of government; and every man who, by accepting an office by appointment or election, participates in its function, is only the more strongly bound to that supremacy (the law) and to observe the limitations which it imposes upon the exercise of the authority which it (the law) gives. Courts of justice are established, not only to decide upon the controverted rights of the citizens as against each other, but also upon rights and controversies between them and the government, and the dockets of the courts are not without cases containing controversies of the latter class.

of the Jones Law, and of the acknowledged right of the judicial department of the government to decide in proper cases, that statutes which have been passed by both branches of the Legislature and approved by the Governor-General are illegal and unconstitutional, and that said department cannot give a remedy when the citizen has been deprived of his life or property without lawful authority and without due compensation, simply because the executive or legislative department has ordered it? If that is the law in the Philippines it sanctions a tyranny which has no existence in the monarchies of Europe nor in any other government which has a just claim to a well-regulated liberty and the protection of the personal rights, privileges, life, and property of the individual.

Can it be said that the judicial department of the government can intervene in a petition for the writ of habeas corpus to relieve a citizen who has been imprisoned, illegally, and cannot take jurisdiction in proper proceedings to consider the question whether or not he has been deprived of his *property* even though such deprivation has been brought about by an illegal act or resolution of the Legislature, or by an order of the executive department of the government? Here again we are of the opinion that the question contains its own answer to the average citizen.

We cannot give our assent to the doctrine that the Senate or House of Representatives is the final judge of its own powers and privileges, *without restraint*, especially in cases in which the rights, privileges, emoluments, property, and liberties of a citizen are concerned. The legality of their action may always be examined and determined by the courts. Especially are the courts competent, and it is proper for them to consider whether the pro-

ernment are in *conformity with the laws and the constitution of the land*, because, living under a written constitution, no branch or department of the government is supreme; and it is not only the province, but the sworn duty, of the judicial department, to *determine* in cases regularly brought before it, whether the *powers of any branch* of the government, even those of the legislature in the enactment of laws or resolutions, have been exercised in conformity with the organic law of the land, and if they have not, to treat such acts or resolutions as null and void.

All of the foregoing arguments are intended to apply only to cases in which some action has been taken, which illegally deprives a citizen of his rights, privileges, prerogatives and emoluments. Nothing herein is intended to modify in the slightest degree the decisions heretofore announced in the cases of Severino *vs.* Governor-General, Perfecto *vs.* Wood, and Abueva *vs.* Wood, above cited. In those cases the courts were called upon to require one or both of the other two coordinate departments to act in a particular way upon questions which were *specially confided to those departments*, while in the present case the courts are called upon to decide whether or not the action which the legislative department of the government has taken is legal and in conformity with the powers conferred by the organic law of the land. A wide distinction must be made between requiring a particular act to be done and a pronouncement upon the legality of that act after it is performed. The courts will not require the legislative department of the government to adopt a particular law, but they are authorized and empowered, and it is their sworn duty, to pronounce a statute null and void after adoption if the same is found to be contrary to the provisions of the organic

beyond the powers of the legislative department. This doctrine is amply exemplified in the thousands of cases which have been brought before the courts in petitions for habeas corpus where the petitioner alleged that he has been imprisoned under an unconstitutional law and in many, many cases where men have been deprived of their rights and property by an illegal and unconstitutional Act adopted by the Legislature. In the first class of cases mentioned, the courts will never interfere in this jurisdiction to direct or coerce action, while in the second class of cases the courts should always take jurisdiction for the purpose of determining and making pronouncements upon the legality and constitutionality of acts actually taken.

In view of all of the facts and the law, we are compelled to decide that we are justified, authorized, and, under our oath of office, compelled to take jurisdiction of the petition for the purpose of ascertaining whether or not the petitioner has been deprived, illegally, of a right guaranteed to him under the Constitution and laws of the Philippine Islands. In exercising the high authority conferred upon us to pronounce valid or invalid a particular resolution or statute of the Legislature, we are only the administrators of the public will as expressed in the fundamental law of the land. If an Act of the Legislature is to be held illegal by the courts, it is not because the judges have any control over the Legislature, but because the particular statute or resolution is forbidden by the fundamental law of the land, and because the will of the people, as declared in such fundamental law, is paramount and must be obeyed by every citizen, even the Legislature. In pronouncing a statute or resolution illegal, we are simply interpreting the meaning, force, and application of the fundamental

law of the state. If a particular resolution or statute of the Legislature is within its constitutional power, it will be sustained, whether the courts agree or not in the wisdom of its enacment. If the resolution or statute covers a subject not authorized by the fundamental law of the land, then the courts are not only authorized but are compelled and justified in pronouncing the same illegal and void, no matter how wise or beneficent such resolution or statute may seem to be. The courts will not measure their opinion with the opinion of the legislative department, as expressed in the resolution or statute, upon the question of the wisdom, justice and advisability of a particular law, but the wisdom, justice and advisability of a particular law must be tested by the provisions of the fundamental law of the state. It is the sworn duty of the judicial department of the government to determine the limits, under the law and the Constitution, of the authority of both the executive and legislative departments.

THIRD. *May the Supreme Court grant the remedy prayed for?*

In the Government of the Philippine Islands no man is so high that he is above the law. All the officers of the government, from the highest to the lowest, are creatures of the law and are bound to obey it. It cannot be said, in view of the acknowledged right of the judicial department of the government to pass upon the constitutionality of statutes or resolutions of the legislative department, that the courts cannot give a remedy to a citizen of the state when he has been illegally deprived of his life, his property, or his liberty by force, or by virtue of an unconstitutional act or resolution of the legislative department. A contrary conclusion would sanction a tyranny under the American flag, which has no existence even in the monarchies nor in any

other government which has a just claim to a stable government, a well regulated liberty, and the protection of the personal rights of individuals. *Every department, every officer* of the government, and every individual, are equally bound by the mandatory provisions of the fundamental law. When a citizen under the American flag has been deprived of his life, his liberty, or his property by an illegal statute or resolution, the official or department so depriving him cannot say to the courts: "Stop here, for the reason that I (we) have *acted as a representative of a different department of the government.*"

A pronouncement, by the highest tribunal of justice in the Philippine Islands, that the resolution is *ultra vires,* illegal and void, we confidently believe, will be sufficient to cause an immediate revocation of the same, and the adoption of a further order to the effect that all persons affected by it will be restored to their rights. We are confident in that belief, because we cannot believe that the resolution was adopted out of a spirit of malice, hatred, or revenge, but in the full belief that the law permitted it as a disciplinary measure. We cannot believe that the honorable senators who took part in its adoption intended to deprive any of the citizens of their country of a constitutional right. We are confident that the honorable senators recognize, as fully as the courts do, that the constitution is the supreme law of the land and is equally binding upon them as it is upon every citizen, high or low, and upon every branch, bureau or department of the government. We are sure that the respondents will be among the very first to openly criticize and vigorously denounce any person, entity, or department within the Philippine Islands, who should be guilty of the slightest disregard or disobedience to the mandates of the constitution—the law of the people.

The majority opinion decides that the petitioner and the people whom he represents have been *illegally deprived of their rights,* but that he and they are without a remedy—*damnum absque injuria.* To that doctrine we cannot give our assent.

The nightmare which runs through the majority opinion concerning the impossibility of the execution of a judgment, is hardly justifed in a stable and well-organized government, among a people who love peace and good order, who despise disobedience to law and disloyalty to the constituted authorities. The history of the Filipino people shows that they love peace, good order, and will, with a spirit of alacrity, obey the law when they once understand what the law is. We rest in the confident faith that that spirit still controls in the Philippine Islands. The remedy prayed for should be granted in a modified form.

RESUME

1. The Organic Law (Jones Law) prohibits the removal of an appointive senator by the Legislature.

2. The said resolution has the effect of a removal of an appointive senator.

3. The resolution, therefore, is invalid, illegal, and void, according to the unanimous opinion of the court.

4. The legislative power and procedure of the Senate must be exercised in conformity with the Organic Law.

5. The courts have jurisdiction *to inquire* into the legality or constitutionality of a law or resolution of the legislative department, whenever a citizen alleges that he has been deprived of his rights under such law or resolution.

6. The courts of the Philippine Islands have

jurisdiction *to determine* the constitutionality of acts or resolutions or procedure of the Senate.

7. The petition and demurrer present the question of the constitutionality of said resolution, as well as the constitutional power of the Senate to adopt it.

8. The Supreme Court of the Philippine Islands, having jurisdiction, its decree or order should afford relief from the effect of said illegal resolution.

Therefore, the enforcement of the said illegal and void resolution should be enjoined.

(Sgd.) E. FINLEY JOHNSON

OSTRAND, *J.*, dissenting:

With much of what is said in the majority opinion I am in entire accord. I agree that the Senate in suspending the petitioner, declaring his pay forfeited and depriving his senatorial district of the representation granted by the Organic Act, exceeded its powers and jurisdiction. I also concede that the courts will not, by mandamus or other writs, attempt to control the exercise by the other departments of the government of discretional or executive powers or duties conferred upon them by the constitution or by constitutional statutes. I further concede that the courts will not interfere with acts of another department when such acts are of a purely political and non-justiciable character.

But when the court holds, as it in effect does in this case, that because the respondents are members or officers of another department the courts have no power to restrain or prohibit them from carrying into effect an unconstitutional and therefore void act of that department, an act wholly outside of its province, and which deprives a citizen of rights and privileges to which he, by law, is en-

titled, I find myself unable to follow its reasoning or to yield my assent to its conclusions.

Before entering upon a more extended discussion of the issues in the case, it may be well to emphasize that there is no question as to the power of the Philippine Senate to punish its members for disorderly behavior. That is conceded. But I contend that the court may intervene to prevent the execution of the penalty imposed if such penalty transcends the domain of the Legislature and encroaches upon that of the Chief Executive in direct violation of the Organic Act. I shall also maintain that the assertion in the majority opinion to the effect that this, in substance, is an action against the Senate as a body, is erroneous.

The fundamental error into which the court has fallen is that it has failed to note the distinction between acts within the province of a department and those outside thereof; it confuses entire absence of power with the alleged improper exercise of legitimate powers. This distinction is obvious and very important. Where a power or duty has been entrusted to the Chief Executive by the Organic Act, this court will not, under the rule laid down in the case of Severino *vs.* Governor-General (16 Phil., 366), attempt to control or direct the exercise by him of that power or duty; he is presumed to be the best judge of the time and the manner of its exercise. For the same reason, the court will not undertake to direct the exercise of the discretional powers of the legislative department within its legitimate sphere. But it must necessarily be otherwise where either department steps outside of its province and arrogates to itself any of the constitutional powers of the other. The doctrine of non-interference by the judiciary with the other departments of the government rests primarily on the ground that each department is presumed to pos-

sess special qualifications and opportunities for the exercise of the powers entrusted to it by the constitution. It follows that the doctrine does not apply to cases where a department goes beyond its legitimate sphere. This is, indeed, the first time any court has ever held that in such cases there may be no judicial interference. (Bailey on Mandamus, p. 926.)

That the court has overlooked this distinction is very apparent from the fact that in all of the cases cited in support of its conclusions, the acts complained of were *within* the province of the respondents and that in none of them is there any question of the encroachment by one department upon the domain of another. It is very true that in some of the cases dicta are to be found which, taken by themselves alone and without reference to the context, may, at first sight, lead to the inference that the separation of the various departments of the government is so complete that the courts, under no circumstances, will review *any* act of the Legislature or the executive, irrespective of its character, but when the cases where such dicta occur are closely examined, this impression disappears and it becomes obvious that the dicta have no reference to acts of clear usurpation of powers.

Five of the cases cited relate to judicial review of the exercise of the legislative powers. In the first of these cases, Hiss *vs.* Bartlett ([1853], 69 Mass., 468), a habeas corpus proceeding, it was held that the House of Representatives of Massachusetts had the implied power to expel a member and that the reasons for the expulsion, and the question whether a member was duly heard before being expelled, could not be inquired into by the courts.

French *vs.* Senate ([1905], 146 Cal., 604), was a proceeding in mandamus. The Constitution of

the State of California expressly gives either house of the Legislature authority to expel members by a two-thirds majority vote. The petitioners had been so expelled from the Senate but alleged that it had been done without due process of law and therefore asked that the Senate be compelled to again admit them as members. The court denied the writ holding that the judicial department had no power "to revise even the most arbitrary and unfair action of the legislative department, or of either house thereof, taken in pursuance of the power *committed exclusively to that department by the constitution.*"

State *vs.* Bolte ([1899], 151 Mo., 362), was a suit for a writ of mandamus to compel the presiding officer and the Secretary of the State Senate, and the Speaker of the House of Representatives and its chief clerk, to take the necessary steps to complete the enactment of a certain bill, it being alleged that it had already passed both houses by a majority vote. The petition was resisted on the ground that the presiding officer of the Senate had ruled that the bill did not pass the Senate and that the court had no jurisdiction to review the ruling. The court held that the duty the performance of which it was sought to enforce was one strictly within the line of the duties of the presiding officer of the Senate and was not merely ministerial. The writ was therefore denied.

The case of *Ex-parte* Echols ([1886], 89 Ala., 698), was a petition by one of the members of the State Legislature for a writ of mandamus to the Speaker of the House of Representatives to compel him to send a certain bill to the Senate. The Speaker ruled that the bill had not passed the house with the requisite majority of votes and therefore refused to certify it to the Senate. The petition was denied, the court stating that it would not "interfere

with either of the coordinate departments of the government in the *legitimate exercise of their jurisdiction and powers.*"

There is as far as I can see, absolutely nothing in these cases which can have any direct bearing on the present case. In two of them the question before the court was the alleged abuse of constitutional powers resting in the Legislature; the other three were actions to compel the performance of duties entrusted by law to the Legislature or its officers and which were not merely ministerial. In all of them the Legislature operated within its own domain.

The other cases cited to the same point in the majority opinion are actions directed against chief executives . The two most favorable to the majority of the court are Mississippi *vs.* Johnson (4 Wall., 475) and Sutherland *vs.* Governor of Michigan (29 Mich., 320). The facts of the first case are stated in the majority opinion and need not be restated here. But the portions quoted from the decision in that case should be read in connection with the following quotation from the same decision, which I think forms its real basis:

"The single point which requires consideration is this: Can the President be restrained by injunction from carrying into effect an Act of Congress alleged to be unconstitutional?

"It is assumed by the counsel for he State of Mississippi, that the President, in the execution of the Reconstruction Acts, is required to perform a mere ministerial duty. In this assumption there is, we think, a confounding of the terms "ministerial" and "executive," which are by no means equivalent in import.

"A ministerial duty, the performance of which may, in proper cases, be required of the head of a

department, by judicial process, is one in respect to which nothing is left to discretion. It is a simple, definite duty, arising under conditions admitted or proved to exist, and imposed by law.

* * * * * * *

"Very different is the duty of the President in the exercise of the power to see that the laws are faithfully executed, and among these laws the Acts named in the bill. By the first of these Acts he is required to assign generals to command in the several military districts, and to detail sufficient military force to enable such officers to discharge their duties under the law. By the supplementary Act, other duties are imposed on the several commanding generals, and these duties must necessarily be performed under the supervision of the President as Commander-in-chief. The duty thus imposed on the President is in no just sense ministerial. It is purely executive and political."

Considering the language here quoted, it is difficult to regard the first paragraph of the quotation from the same decision in the majority opinion as anything but *dictum*. In any event, if it is to be taken as authority for the proposition that the United States Supreme Court may prevent officers or members of Congress from carrying into effect an unconstitutional resolution, it is definitely overruled by the decision in the case of Kilbourn *vs.* Thompson (103 U. S., 168), in which the court held that an action would lie against the Speaker and other officers of the House of Representatives of Congress for attempting to carry into effect an unconstitutional resolution of the house committing Kilbourn to prision for contempt. The court further held that "the House of Representatives (of Congress) is not the final judge of its own power and privileges in cases in which the rights and liberties of the subject are concerned, but the le-

gality of its action may be examined and determined by this court."

The case Sutherland *vs.* Governor of Michigan is the leading case in favor of the view that all official acts of the chief executive of a State are executive as distinguished from ministerial and therefore not subject to judicial review. The case represents the extreme limit to which courts have gone in that direction and its soundness has been questioned by most authorities on the subject, but because of the high reputation of the writer of the decision, Judge Cooley, it is, nevertheless, entitled to consideration.

The case was a petition for a writ of mandamus to compel the Governor of Michigan to issue a certificate of the completion of the construction of the Portage Lake and Lake Superior Ship Canal. The statutes required the governor to issue the certificate *when he should be satisfied that the work had been done in conformity with the law. The duty devolving* upon the governor was therefore clearly discretional and this was recognized by the court, but Judge Cooley preferred to plant the decision on additional and broader grounds, which may best be stated in the language of the court.

"There is no very clear and palpable line of distinction between those duties of the governor which are political and those which are to be considered ministerial merely; and if we should undertake to draw one, and to declare that in all cases falling on one side of the line the governor was subject to judicial process, and in all falling on the other he was independent of it, we should open the doors to an endless train of litigation, and the cases would be numerous in which neither the governor nor the parties would be able to determine whether his conclusion was, under the law, to be final, and the

courts would be appealed to by every dissatisfied party to subject a coordinate department of the government to their jurisdiction. However desirable a power in the judiciary to interfere in such cases might seem from the standpoint of interested parties, it is manifest that harmony of action between the executive and judicial departments would be directly threatened, and that the exercise of such power could only be justified on most imperative reasons. Moreover, it is not customary in our republican government to confer upon the governor duties merely ministerial, and in the performance of which he is to be left to no discretion whatever; and the presumption in all cases must be, where a duty is devolved upon the chief executive of the State rather than upon an inferior officer, that it is so because his superior judgment, discretion, and sense of responsibility were confided in for a more accurate, faithful, and discreet performance than could be relied upon if the duty were devolved upon an officer chosen for inferior duties. And if we concede that cases may be pointed out in which it is manifest that the governor is left to no discretion, the present is certainly not among them, for here, by law, he is required to judge, on a personal inspection of the work, and must give his certificate on his own judgment, and not on that of any other person, officer or department.

"We are not disposed, however, in the present case, to attempt on any grounds to distinguish it from other cases of executive duty with a view to lay down a narrow rule which, while disposing of this motion, may leave the grave question it presents to be presented again and again in other cases which the ingenuity of counsel may be able to distinguish in some minor particulars from the one before us. If a broad general principle underlies

all these cases, and requires the same decision in all, it would scarcely be respectful to the governor, or consistent with our own sense of duty, that we should seek to avoid its application and strive to decide each in succession upon some narrow and perhaps technical point peculiar to the special case, if such might be discovered.

"And that there is such a broad general principle seems to us very plain. Our government is one whose powers have been carefully apportioned among three distinct departments, which emanate alike from the people, have their powers alike limited and defined by the constitution, are of equal dignity, and within their respective spheres of action equally independent. One makes the laws, another applies the laws in contested cases, while the other must see that the laws are executed. This division is accepted as a necessity in all free governments, and the very apportionment of power to one department is understood to be a prohibition of its exercises by either of the others. The executive is forbidden to exercise judicial power by the same implication which forbids the courts to take upon themselves his duties.

"It is true that neither of the departments can operate in all respects independently of the others, and that what are called the checks and balances of government constitute each a restraint upon the rest. The legislature prescribes rules of action for the courts, and in many particulars may increase or diminish their jurisdiction; it also, in many cases, may prescribe rules for executive action, and impose duties upon, or take powers from, the governor; while in turn the governor may veto legislative acts, and the courts may declare them void where they conflict with the constitution, notwithstanding, after having been passed by the legislature, they

have received the governor's approval. But in each of these cases the action of the department which controls, modifies, or in any manner influences that of another, is had strictly within its own sphere, and for that reason gives no occasion for conflict, controversy or jealousy. The legislature, in prescribing rules for the courts, is acting within its proper province in making laws, while the courts, in declining to enforce an unconstitutional law, are in like manner acting within their proper province, because they are only applying that which is law to the controversies in which they are called upon to give judgment. It is mainly by means of these checks and balances that the officers of the several departments are kept within their jurisdiction, and if they are disregarded in any case, and power is usurped or abused, the remedy is by impeachment, and not by another department of the government attempting to correct the wrong by asserting a superior authority over that which by the constitution is its equal.

"It has long been a maxim in this country that the legislature cannot dictate to the courts what their judgments shall be, or set aside or alter such judgments after they have been rendered. If it could, constitutional liberty would cease to exist; and if the legislature could in like manner override executive action also, the government would become only a depotism under popular forms. On the other hand it would be readily conceded that no court can compel the legislature to make or to refrain from making laws, or to meet or adjourn at its command, or to take any action whatsoever, though the duty to take it be made ever so clear by the constitution or the laws. In these cases the exemption of the one department from the control of the other is not only implied in the framework of

General suspending the privilege of the writ. The court held that "whenever a statute gives discretionary power to a person to be exercised by him upon his own opinion on certain facts, such statute constitutes him the sole and exclusive judge of the existence of those facts;" and that when the Governor-General, "with the approval of the Philippine Commission declares that a state of rebellion, insurrection, or invasion exists, this declaration or conclusion is conclusive against the judicial department of the government." The writ was therfore denied.

The leading case of Severino *vs.* Governor-General (16 Phil., 366), was a petition for a writ of mandamus to compel the Governor-General to call a special election for the purpose of electing a municipal president of the town of Silay, Occidental Negros, and to restrain the provincial board of Occidental Negros from appointing a municipal president during the pendency of the action. By statute, the duty of calling a special election devolves upon the Governor-General and the principal question presented for consideration was whether the court had power to compel the Governor-General to immediately perform such duty. The court denied the writ holding that "where a duty is devolved upon the Governor-General of the Philippine Islands, rather than upon an inferior officer, it will be presumed to have been done because his superior judgment, discretion, and sense of responsibility were confided in for a more accurate, faithful, and discret performance than could be relied upon if the duty were put upon an officer chosen for inferior duties," and that the court would not undertake to direct or control the exercise of such duty. Incidentally, the court also stated that "the powers, duties, and responsibilities of the Governor-General of the Philippine Islands are far more comprehensive than those of State governors of the United

States;" and laid down the rule that "the courts of the Philippine Islands have no jurisdiction to interfere, by means of a writ of mandamus or injunction, with the Gevernor-General as the head of the executive department in the performance of any of his official acts."

In the case of Forbes *vs.* Chuoco Tiaco and Crossfield (16 Phil., 534), the facts may be briefly stated as follows:

The Governor-General deported certain Chinese persons from Manlia to Amoy, China. The deportees subsequently returned to Manila and brought an action in the Court of First Instance against the Governor-General and certain police officials for damages, alleging that the deportation was unlawful. The defendants thereupon filed a petition in this court for a writ of prohibition commanding the Judge of he Court of First Instance to refrain from assuming jurisdiction in the case brought by the deportees, the petitioners alleging that "the power to deport foreign subjects of the Chinese Empire is a privative one of the Governor-General and is not subject to judicial review." This court granted the writ holding that "the Governor-General, acting in his political and executive capacity, is invested with plenary power to deport obnoxious aliens whose continued presence in the territory is found by him to be injurious to the public interest, and in the absence of express or prescribed rules as to the method of deporting or expelling them, he may use such methods as his official judgment and good concience may dictate;" that he could not be held liable in damages for the exercise of such power and that the courts would not interfere.

Case R. G. No. 20867, Perfecto *vs.* Wood (not published in the reports) involed exaclty the same principles as Severino *vs.* Governor-General, except

that the special election was to be called for the purpose of filling a vacancy in the Senate. The majority decision, signed by four justices, denied the petition on the same grounds as those stated in the Severino case. Three justices concurred in the result on the ground that the case had then become a moot case.

The doctrine laid down in Forbes *vs.* Chuoco Tiaco and Crossfield (*supra*) was followed in the case of *In re* McCulloch Dick.

The case of Abueva *vs.* Wood (22 Off. Gaz., 667), was a petition for a writ of mandamus to compel the Governor-General, the President of the Senate, the Speaker of the House of Representatives, the Insular Auditor, the Executive Secretary of the Independence Committee and the Secretary of the same Committee to permit the petitioners to examine all vouchers and documents in connection with disbursements and payments made from the funds of the Independence Commission. The petition was denied, the court stating:

"It may be asserted as a principle founded upon the clearest legal reasoning that the legislature or legislative officers, in so far as concerns *their purely legislative functions*, are beyond the control of the courts by the writ of mandamus. The legislative department, being a coordinate and independent branch of the government, its action *within its own sphere* cannot be revised or controlled by mandamus by the judicial department, without a gross usurpation of power upon the part of the latter. When the legislative department of the government imposes upon its officers the performance of certain duties which are not *prohibited by the organic law of the land*, the performance, the nonperformance or the manner of the performance is under the direct control of the legislature, and such officers

are not subject to the direction of the courts."

The case of Concepcion *vs.* Paredes (42 Phil., 599), was a petition for a writ of prohibition commanding the respondent Secretary of Justice to resist from carrying into effect the provisions of Act No. 2941 requiring the Judges of the Courts of First Instance to draw lots every five years for exchange of district. The court held that the act constituted an encroachment by the Legislature upon the Governor-General's power of appointment and was therefore unconstitutional. The writ was granted.

What is there in these cases which can serve as authority for the theory that the courts may not interfere with the execution of acts beyond the jurisdiction of the department sought to be restrained? Absolutely nothing. The rather broad *dictum* in the case of Severino *vs.* Governor-General, that the courts of the Philippine Islands have no jurisdiction to interfere with the head of the executive department in the performance of any of his official acts, must be considered in connection with the context is clearly limited to acts *within the limits of his jurisdiction.*

In Abueva *vs.* Wood the doctrine of non-interference with the Legislature is carefully limited to "actions within its own sphere" and "duties not prohibited by the organic law of the land."

In the present case we are not dealing with an act of political and non-justiciable character, nor is there a question of interference with the exercise of discretionary powers or duties resting in the Legislature under the Organic Act. We are simply called upon to prevent the carrying into effect of unconstitutional and therefore, in a legal sense, non-existent parts of a resolution of one of the branches of the Legislature which, if executed, will

result in an encroachment upon the domain of another department and deprive the petitioner of rights and privileges to which he is by law entitled. There is no question as to the power of the Senate to punish its members for disorderly behavior, but it must be insisted that the penalty shall not constitute a usurpation of the powers of another department of the government in violation of the Organic Act. It is agreed that as long as the penalty does not expressly or impliedly violate that Act, the courts will not interfere.

That the resolution is unconstitutional and void cannot be seriously questioned and is conceded in the majority opinion, but in order to bring the issue into clear relief, it may be well to briefly state the reasons why it must be so held:

The Senate exercises delegated powers, all of which are derived from the Organic Act. That Act provides for twenty-two senators to be elected by the people and for two other senators to be appointed by the Governor-General. In the language of the Act, the appointive senators "shall hold office until removed by the Governor-General." The Act further provides that "The Senate and House of Representatives, respectively, shall be the sole judges of the elections, returns, and qualifications of their elective members, and each house may determine the rules of its proceedings, punish its members for disorderly behavior, and, with the concurrence of two-thirds, expel an elective member." It will be observed that no power to expel or remove appointive members is conferred on the house of the Legislature, nor can such power be inferred or implied from the statute, in view of the fact that it is expressly placed in the hands of the Governor-General. The Act does not limit or qualify the term "remove" and it therefore includes both temporary and permanent removals.

An examination of the Senate resolution in question shows that in effect it provides for a complete temporary removal of the petitioner. It does not merely exclude him from the floor of the Senate Chamber, but he is also "deprived of *all* his prerogatives, privileges, and emoluments as such senator," for the period of one year. As far as he is concerned, his removal from office for that period could not be made more complete. In attempting to exercise the power of such removal, the Senate clearly arrogated to itself powers which it does not possess and which, under the Origanic Act, rest in the Chief Executive. Its resolution to that effect is consequently unconstitutional and void. As is the case with an unconstitutional statute, it has, in the eyes of the law, never existed.

We are therefore confronted with the facts that the petitioner is a duly appointed senater; that he, as a matter of *law*, is not and never has been removed or suspended from office; that he, therefore, as such senator always has been, and still is, entitled to all the prerogatives, privileges, and emoluments of his office; and that, nevertheless, certain officers and members of the Senate, without any legal authority whatever, deprive him of such prerogatives, privileges, and emoluments, including his salary. The Senate has nothing to do with the appointment of an appointive senator and is not, as in the case of elective members, the judge of his qualifications; when duly appointed, the officers of the Senate are legally bound to recognize him as a senator; they have no discretion in the matter and their duties in regard thereto are purely ministerial.

In these circumstances, upon what legal principles is this court precluded from granting the petitioner the relief he demands? Why cannot, for instance, members of the Committee on Accounts

and the Paymaster of the Senate be directed to cause to be paid to the petitioner the salary fixed by law?

Other courts have not hesitated to use the writ of mandamus to compel performance of similar duties by officers of the legislature. In *Ex parte* Pickett (24 Ala., 91), the writ was issued to the Speaker of the House of Representatives to compel him to certify to the comptroler of Public Accounts the amount to which the petitioner was entitled as a member of the House for mileage and per diem compensation. In State *vs.* Elder (31 Neb., 169), the writ was issued to compel the Speaker to open and publish returns of the general election. In State *vs.* Moffitt (5 Ohio, 350), mandamus was held to lie to the Speaker of the House to compel him to certify the election and appointment of officers. In Wolfe *vs.* McCaull (76 Va., 87), the writ was issued to compel the Keeper of the Rolls of the House of Delegates to print and publish a bill passed by the Legislature and upon request to furnish a copy thereof properly certified. (*See also* Kilbourn *vs.* Thompson, 103 U. S., 168; State *vs.* Gilchrist, 64 Fla., 41; People *vs.* Marton, 156 N. Y., 136.)

As stated at the outset, it is erroneously asserted in the majority opinion that this action is, in substance, a suit against the Senate as a body. This might be true if the act complained of was an act within the jurisdiction of the Senate, but such is not the case here. A practical illustration may, perhaps, make the point clear. Let us suppose that a majority of the members of the Senate should agree to commit a crime against another member and should pass a senatorial resolution to that effect. Would that in anything but form, constitute a senatorial act? And suppose the same members should proceed to carry the resolution into effect, would not an action lie against such members and

could that, in substance, be regarded as an action against the Senate? The questions answer themselves, and though in the present case the illegal act does not constitute a crime, the analogy is, nevertheless, obvious; the distinction is one without a difference. As has already been pointed out, the United States Supreme Court has held that an action may, at the instance of the injured party, be maintained against the presiding officer, as well as other officers, of one of the houses of Congress for the execution of an unconstitutional resolution. In the same case it is also intimated that the action will lie against all members who take direct part in the execution of such a resolution. (Kilbourn *vs.* Thompson, *supra.*)

It may further be noted that though the prayer in the petition in this case does not expressly so state, the body of the petition shows sufficiently that the remedy to be applied may not be the same in regard to all of the defendants. The allegations seem broad enough to cover both mandamus and prohibition and the petition is not demurred to on that ground. It is also possible that if evidence were permitted some of the defendants might be absolved from the complaint.

It has been suggested that to entertain an action against a coordinate department of the government would be an unwarranted assertion of superiority on our part. I fail to see the validity of this observation. This is not a question of departmental superiority or inferiority. This court asserts no superiority for itself; it only maintains the superiority of the law to which all of us must yield obedience. The pronouncements of the court are simply the voice of the law as understood by the court and are not personal matters. Even if this action were brought against a coordinate depart-

ment as a body—which it is not—the court would still be in duty bound to apply the law of the land to the case and do its best to enforce that law irrespective of the rank or importance of the parties.

In the course of the argument of the case it was intimated that if the writ prayed for were issued its enforcement might be the cause of disturbance and strife. The suggestion is almost an insult to the intelligence and patriotism of the defendants and I feel sure that the fear thus expressed is entirely without foundation. At least there has been no trouble of that kind in other jurisdictions where writs have issued to officers or members of the legislature. If courts perform their duties with firmness, rectitude and moderation, regardless of personal or political considerations, their decisions will be respected and their orders and writs generally obeyed. It is usually when courts fail in these respects, and thus prove unfaithful to their trust, that their orders are disregarded and trouble ensues.

The decision of the court in the present case enjoys the distinction of being without a precedent and of resting on no sound legal principle of which I am aware. The arguments advanced in its support are excuses and not reasons. If carried to its logical conclusion, it may have far-reaching and serious consequences. If one branch of the government may with impunity, and with freedom from judicial intervention, freely usurp the powers of another branch, it may eventually lead either to anarchy or to tyranny. A wrong has been committed for which there is no other remedy but that here sought by the petitioner, yet the court refuses to take jurisdiction on the strength of alleged precedents which, as we have seen, in reality have on bearing whatever upon the issues of the case. It is hardly necessary to say that when men are deliberately denied red-

ress for wrongs, the temptation is strong for them to take the law into their own hands and there is perhaps no more fruitful source of popular unrest and disturbance.

I regret to see the decision find a place in our jurisprudence and can only hope that it will not be followed by this court in the future.

The demurrer to the petition should be overruled.

(Sgd.) JAMES A. OSTRAND

On September 22, 1924, the Clerk of the Supreme Court of the Philippine Islands entered the following final judgment:

(Caption and title omitted)

JUDGMENT

The Court having regularly acquired jurisdiction for the trial of the above-entitled cause submitted by both parties for decision, after consideration thereof by the Court upon the record, its decision and order for judgment having been filed on the eleventh day of September, 1924;

By virtue thereof it is hereby adjudged and decreed that the petition is dismissed, without costs. Such is the judgment of the court.

(Sgd.) V. ALBERT
Clerk, Supreme Court, P. I.

Certified correct:

Clerk, Supreme Court, P. I.

On September 25, 1924, counsel for petitioner filed the following exception:

(Caption and title omitted)

EXCEPTION

The undersigned attorneys, in behalf of the petitioner, hereby excepts to the decision of this Court in the above entitled case, so much as said resolution holds that this court has no jurisdiction over the defendants, on the ground that the same is contrary to the law and the Constitution, and contrary to the allegations of the complaint.

Manila, P. I., September 25, 1924.

ARANETA & ZARAGOZA,
By (Sgd.) GREGORIO ARANETA.
Attorneys for the petitioner,
28 Juan Luna, Manila.

On September 26, 1924, the Supreme Court issued the following resolution:

Considering the pleadings of the attorneys for the petitioner in case No. 22041, José Alejandrino vs. Manuel L. Quezon et al., excepting to the decision of this Court in so far as it holds that this court has no jurisdiction over the defendants, EXCEPTION NOTED.

On November 28, 1924, the attorneys for the petitioner filed the following notice of intention to apply for a writ of certiorari to the Supreme Court of the United States:

(Caption and title omitted)

Comes now the petitioner Jose Alejandrino in the above-entitled action, by the undersigned attorneys, and hereby gives notice of his intention to apply to the Supreme Court of the United for a

writ of certiorari for a review of the decision and judgment of this Court entered in this case, and respectfully requests that he be relieved to file a bond, as by this petition of certiorari, no execution is stayed upon the decision rendered in this case.

Manila, P. I., November 26, 1924.

ARANETA & ZARAGOZA
By (Sgd.) SALVADOR ARANETA
Attorneys for the petitioner
28 Juan Luna, Manila.

On December 2, 1924, the Supreme Court passed the following resolution:

Considering the motion of the attorneys for the petitioner in case No. 22041, Jose Alejandrino vs. Manuel L. Quezon et als., giving notice of intention to apply to the Supreme Court of the United States for a writ of certiorari for a review of the decision and judgment of this Court entered in this case and that the petitioner be relieved to file a bond, therein, it is ordered that the motion be attached to the record.

THE UNITED STATES OF AMERICA
PHILIPPINE ISLANDS

In the Supreme Court of the Philippine Islands

I, V. Albert, Clerk of the Supreme Court of the Philippine Islands, do hereby certify that the foregoing ninety-seven (97) printed pages contain a true and correct translation and transcript of the record of the case entitled Jose Alejandrino, petitioner, *versus* Manuel L. Quezon, *et al.*, concerning petition for mandamus and injunction, bearing No. 22041 of the General Register of this Supreme Court.

In witness whereof, I have hereunto set my hand and affixed the seal of the Supreme Court of the Philippine Islands this.....day of December, A. D. nineteen hundred and twenty-four.

V. ALBERT
Clerk, Supreme Court of the Philippine Islands

SUPREME COURT OF THE UNITED STATES

No. 972, October Term, 1924

ORDER ALLOWING CERTIORARI—Filed April 13, 1925

The petition herein for a writ of certiorari to the Supreme Court of the Philippine Islands is granted. And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

Office Supreme Court, U.
FILED
MAR 11 1925
WM. R. STANSBURY
CLERK

No. ..972.

IN THE SUPREME COURT OF THE UNITED STATES

Term, 1925

JOSE ALEJANDRINO,
Petitioner,

versus

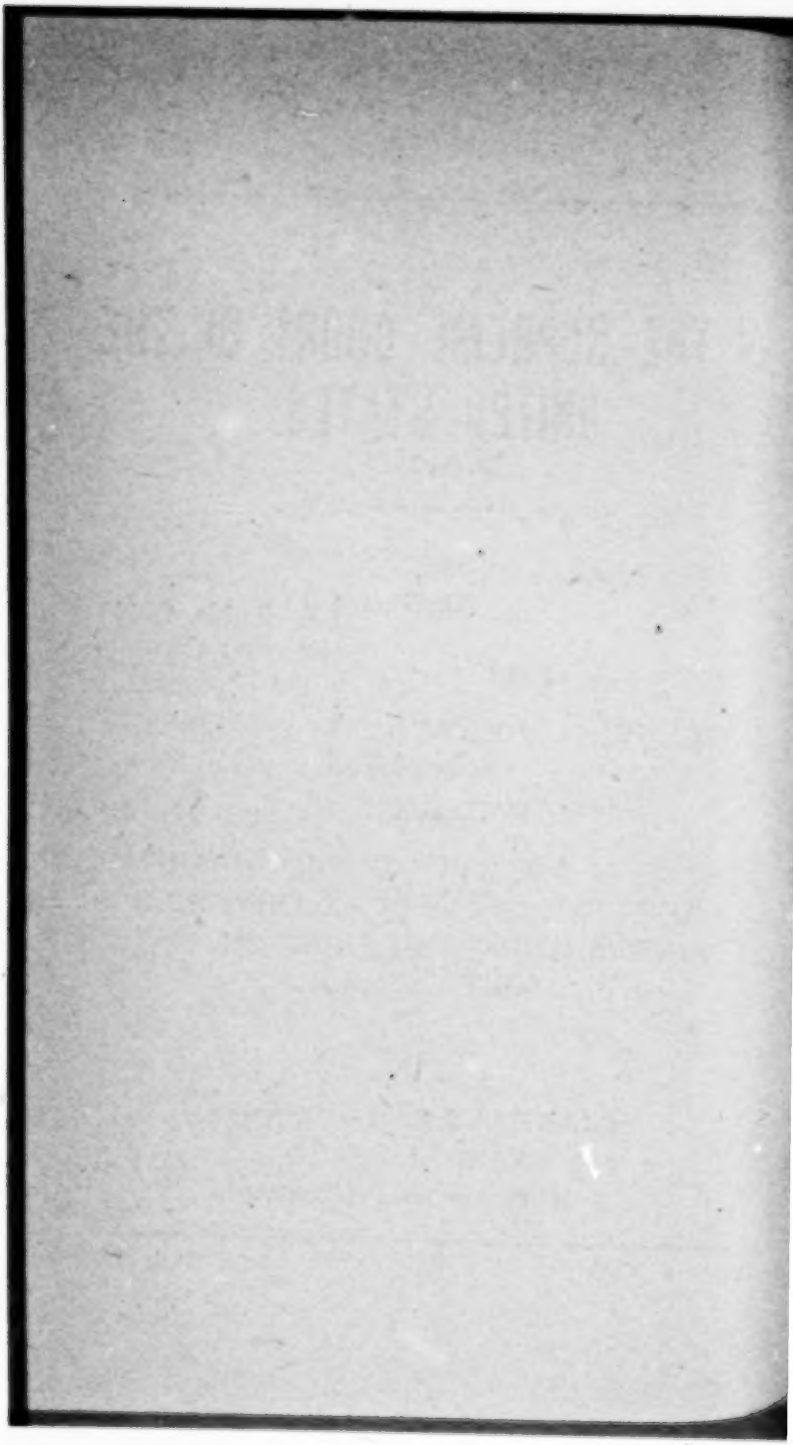
MANUEL L. QUEZON, et al.,
Respondents.

R. G. No. 22041
Supreme Court of the Philippine Islands

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF THE PHILIPPINE ISLANDS, AND BRIEF IN SUPPORT THEREOF.

ARANETA & ZARAGOZA and
CLARO M. RECTO,
Attorneys for Petitioner.

IMP. "LA NUEVA ERA" 501 LARA, MANILA
TEL. 48786



No. .....

IN THE SUPREME COURT OF THE UNITED STATES

Term, 1925

JOSE ALEJANDRINO,
Petitioner,

versus

MANUEL L. QUEZON, et al.,
Respondents.

R. G. No. 22041
Supreme Court of the Philippine Islands

PETITION FOR CERTIORARI TO THE SUPREME COURT OF THE PHILIPPINE ISLANDS

To the Honorable the Supreme Court of the United States:

The above named petitioner Jose Alejandrino prays for a writ of certiorari to review a judgment of the Supreme Court of the Philippine Islands in a case entitled Jose Alejandrino, petitioner, *vs.* Manuel L. Quezon et al., respondents.

STATEMENT OF THE CASE

The petitioner in this proceeding in mandamus and in injunction is Jose Alejandrino, a Senator appointed by the Governor-General to represent the Twelfth Senatorial District. The respondents are all members of the Philippine Senate; with the exception of Faustino Aguilar, who is the Secretary of the Philippine Senate; Bernabe Bustamante, who is the Sergeant-at-Arms of the Philippine Senate, and Francisco Dayao, Paymaster of the Philippine Senate.

The *casus belli* is a resolution adopted by the Philippine Senate composed of the respondent Senators, on February 5, 1924, depriving Senator Alejandrino of all the prerogatives, privileges, and emoluments of his office for the period of one year from the first of January, 1924. The resolution reads as follows:

"RESOLVED: That the Honorable Jose Alejandrino, Senator for the Twelfth District, be, as he is hereby, declared guilty of disorderly conduct and flagrant violation of the privileges of the Senate for having treacherously assaulted the Honorable Vicente de Vera, Senator for the Sixth District, on the occasion of certain phrases being uttered by the

latter in the course of the debate regarding the credentials of said Mr. Alejandrino;

"RESOLVED, FURTHER: That the Honorable Jose Alejandrino be, as he is hereby, deprived of all of his prerogatives, privileges and emoluments as such Senator during one year from the first of January, nineteen hundred and twenty-four;

"AND RESOLVED, LASTLY: That the said Honorable Jose Alejandrino being a Senator appointed by the Governor-General of these Islands, a copy of this resolution be furnished said Governor-General for his information."

The burden of petitioner's complaint is that the resolution above quoted is unconstitutional and entirely of no effect. He prays the court: (1) to declare the aforesaid resolution of the Senate null and void; and (2) as a consequence of the foregoing, to issue a final writ of mandamus and injunction against the respondents ordering them to recognize the rights of the petitioner to exercise his office as Senator and that he enjoy all of his prerogatives, privileges, and emoluments, and prohibiting them from preventing the petitioner from exercising the rights of his office, and from carrying the order of suspension into effect.

By special appearance, the Attorney-General, in representation of the respondents, objected to the jurisdiction of the Court (Transcript of Record, p. 10). After a thorough discussion of the question by both parties who presented their arguments orally and in writing, the Insular Supreme Court declared itself with jurisdiction and ordered the respondents to demur or answer within five days from notice thereof (T. of R., p. 11.) Thereupon the Attorney-General filed his demurrer, pressing the same point of lack of jurisdiction of the judiciary on the subject-matter of the petition, and also taking the ground that the petition does not state facts sufficient to constitute a cause of action.

On passing upon the demurrer the Insular Supreme Court issued the following resolution:

> "After a careful consideration of the petition, the demurrer and the arguments pro and con by the respective parties, a majority of the Court is of the opinion: (a) that it has jurisdiction to consider the questions presented, and (b) that the facts stated in the petition are not sufficient to constitute a cause of action; and it is therefore hereby ordered that the petitioner be permitted, if he so desires, to file an amended petition within twenty-four hours from notice hereof, and that the respondents be required to demur or answer the petition, when amended, with-

in twenty-four hours after the receipt of a copy of the amended petition. It is so ordered.

"Chief Justice Araullo dissents from the opinion of the majority of the Court, for the reason that this Court is without jurisdiction over the subject-matter of the action and to consider the questions presented by the petitioner and having no jurisdiction this Court cannot grant the petitioner the right to amend his pleading on the ground that the facts stated in the petition are not sufficient to constitute a cause of action. And consequently, this petition should be dismissed." (T. of R., p. 21).

To which resolution both parties filed their respective exceptions.

The petition was amended, and by said amendment it was pointed out:

"That the aggresion committed by plaintiff in the person of Senator Vicente Vera did not occur in the hall where the Senate holds its sessions, that it occurred after the Senate had adjourned its session the night of the event, that it did not cause any disorder, disturbance, or impediment in any of the acts or functions of the Senate, and that such resolution of suspension did not, nor could have, for its end, to restore the order not disturbed by the act committed by plaintiff; * * * that the aggression committed by the plaintiff consisted of a buffet given to the lips of Senator Vera and did not produce any injury; and that taking into account the act itself and the

circumstances surrounding it, the penalty imposed on the plaintiff is cruel and unusual." (T. of R., p. 29.)

Nearly five months after the amendment was submitted to the Insular Supreme Court, this High Tribunal rendered a decision, whereby six out of the seven members of the Court who knew of the case declared that the resolution adopted by the Senate, of date February 5, 1924, suspending the petitioner Jose Alejandrino, a Senator for the twelfth senatorial district *appointed* by the Governor-General of the Islands, for a period of one year, from January 1, 1924, is unconstitutional, null and void, on the ground that such a suspension amounted to an expulsion, and that the Senate, under the Organic Act of the Philippine Islands, has no authority to expel an appointive senator, and on the further ground that the Constitution has purposely withheld from the two Houses of the Legislature the power to suspend a member of the Legislature, a power not included neither in the power to punish nor in the power to expel.

One member of the Court abstained from expressing his view on that point, thinking it unnecessary and improper in view of the opinion of the

majority of the Court, to which he concurred, that the Court had no jurisdiction on the subject-matter of the case. On the question of the lack of jurisdiction of the Court, two very forceful dissenting opinions were filed by Justices Johnson and Ostrand.

It seems proper to point out that the new facts as brought up by the amendment of the complaint, are not responsible in any way for the change in the opinion of the members of the Court. Independently of the circumstances of the aggression and as to whether the punishment was cruel and unusual, the members of the Supreme Court declared the resolution of the Senate suspending Senator Alejandrino, unconstitutional, for entire lack of power of the Senate to suspend an appointive Senator under whatsoever circumstances.

It should also be pointed out that even though the suspension of Senator Alejandrino from all prerogatives and privileges expires on December 31, 1924, so that this Honorable Supreme Court of the United States may not be able to grant in time the relief sought that the petitioner be reinstated in all his prerogatives and privileges as a Senator, still it is respectfully submitted that this Honorable Supreme

Court should grant the writ of certiorari, declaring that the resolution in question is unconstitutional and that the Judiciary has jursidiction over the case,—and grant the relief sought as to the emoluments that the illegally suspended senator has a right to recover.

QUESTIONS PRESENTED

Two are the main important questions presented:

First. Is the resolution in question within the powers of the Senate?

Second. Has the Supreme Court jurisdiction to pass upon the constitutionality or unconstitutionality of a resolution of the Senate and the power to grant the remedy prayed for?

REASONS FOR THE ALLOWANCE OF THE WRIT

I.

That according to Section 27 of the Act of Congress approved August 29, 1916, in connection with Section 5 of the Act of Congress approved September 6, 1916, this court has jurisdiction by certiorari or otherwise, to require that there be certified to it for review and determination any cause decided by

the Supreme Court of the Philippine Islands in which the Constitution or any *statute* * * * of the United States is involved."

II.

That the resolution in question of the Senate of the Philippine Islands, suspending for one year a senator appointed by the Governor-General is unconstitutional in violation of our Organic Law, Act of Congress of August 29, 1916, and therefore a void act of the Senate, an act wholly outside of its province, and which deprives a citizen of rights and privileges to which he by law is entitled, and which furthermore encroaches into the rights and powers of the Governor-General, and into the right of representation of the people of the Senatorial District whose representation in the Senate Senator Alejandrino holds.

III.

That the decision of the Insular Supreme Court declaring itself without jurisdiction upon the subject-matter is in violation of the Organic Act of the Philippine Islands, Act of Congress of August 29, 1916, section 26, which defines the powers and jurisdiction of the Judiciary, and contrary to the well-

settled doctrine of the United States Supreme Court and of the Supreme Court of the Philippine Islands as well, that the will of the people, as embodied in the Constitution (in our case the will of the Congress of the United States as embodied in our Organic law) is paramount to the will of any of the departments of the Government, and that the judiciary which has the Constitutional duty to declare, interpret and uphold the Supreme Law of the land, has the power commensurate to said duty, even as against a coordinate branch of the Government, when the same is acting outside the limits set out by the constitution in violation of rights guaranteed by the Constitution.

Wherefore, your petitioner respectfully prays for a writ of certiorari to the Supreme Court of the Philippine Islands in the case therein entitled Jose Alejandrino, petitioner, *vs.* Manuel L. Quezon et al., respondents, to the end that the same may be reviewed and determined by this court, and that the said judgment of the Supreme Court of the Philippine Islands in the said case may be reversed by this Honorable Court.

CLARO M. RECTO
Attorney for Petitioner.

United States of America)
Philippine Islands } s. s.
City of Manila)

Gregorio Araneta, being duly sworn, says that he was one of the attorneys and counsel in the Supreme Court of the Philippine Islands for the petitioner herein, that he has read the foregoing petition, and that the facts therein stated are true to the best of his information and belief.

(Sgd.) GREGORIO ARANETA

Subscribed and sworn to before me this 2nd day of January, 1925. Affiant exhibited Cedula No. F-30 issued at Manila, on January 3rd, 1924.

SALVADOR ARANETA
Notary Public.

My commission expires
December 31, 1924.

(SEAL)

Doc. No. 1
Page No. 85
Book I

BRIEF IN SUPPORT OF PETITION

I

LEGALITY OF THE RESOLUTION

The Senate of the Philippine Islands exercises delegated powers, all of which are derived from the Organic Act. That Act provides for twenty-two senators to be elected by the people and for two other senators to be appointed by the Governor-General. (Sec. 16.) In the language of the Act the appointive Senators shall be appointed by the Governor-General "without the consent of the Senate" (sec. 16) and "shall hold office until removed by the Governor-General." (Sec. 17.) The Act further provides that "each house may determine the rules of its proceedings, *punish* its members for disorderly behavior, and with concurrence of two-thirds, expel an *elective* member." (Sec. 18.) From these provisions, two obvious conclusions can be drawn:

1. That the Senate has not the power to expel an appointive member of its body.

2. But that it has the power to punish any member for disorderly behavior.

The power to suspend is not within the power to punish nor within the power

to expel. Hence the Senate has not the power to suspend not even an elective member.

On this point the Insular Supreme Court in its decision has said:

"It is noteworthy that the Congress of the United States has not in all its long history suspended a member. And the reason is obvious. Punishment by way of reprimand or fine vindicates the outraged dignity of the House without depriving the constituency of representation; expulsion, when permissible, likewise vindicates the honor of the legislative body while giving to the constituency an opportunity to elect anew; but suspension deprives the electoral district of representation without that district being afforded any means by which to fill the vacancy. By suspension, the seat remains filled but the occupant is silenced. Suspension for one year is equivalent to qualified expulsion or removal." (T. of R., p. 41.)

And Justice Johnson in his opinion reasons in a very forceful language, thus: "The said resolution not only *deprives* the petitioner of all his 'prerogatives, privileges and emoluments for the period of one year, but also *deprives the people of his dis-*

trict, composed of about one million persons, of any representation or participation in the legislative affairs of the government for a period of one year,—a right which is guaranteed to them under the constitution. Such a result was certainly not contemplated by the provisions of the Jones Law." (T. of R., p. 45.)

"The power to punish for misbehavior was intended purely as a disciplinary measure. When a member of the Legislature is removed either by the Governor-General or by the Legislature, a vacancy exists, and the law gives the Governor-General the right to appoint, and the people of the district the right to fill the vacancy by election, so that the people may again, under either case, be represented. A 'suspension' of a member, however, does not create a vacancy, and the people of the district are without a representative and the Governor-General can not appoint one and the people cannot elect one during the period of suspension. They are without representation during that period. They are, for the period of suspension, taxed without representation. If a member, under the power to punish, can be suspended for one year, for the same reason he may be suspended for ten or more years, thus depriving the

Governor-General of his right under the law, and the people of the district, of a representative, and without a remedy in the premises." (T. of R., pp. 45, 46.)

Our Constitution provides:

> "• • • Each of the Senatorial Districts defined as hereinafter provided shall have *the right to elect* two senators • • •" (Sec. 13.)
>
> "• • • Each of the Representative Districts hereinafter provided for shall have the right to elect one Representative • • •" (Sec. 14.)

This right to elect should receive a reasonable interpretation. It means more than the mere act of electing or voting. It covers the right of constantly having—as far as it can be reasonably possible—a member who represents the District in the House.

Our form of government is entirely democratic in nature. Ours, as that of the United States, is a government of the people. One of the purposes of our Organic Act is "to place in the hands of the people of the Philippines as large a control of their domestic affairs as can be given them. • • •" As we have seen it is *the right of this people*, grouped into Districts, to elect their representatives in the Legislature. This right to elect means a right to constantly be represented by a member in the Legisla-

ture. How should we, then, deprive the people of this *express* fundamental and constitutional right, by favoring mere *implied* power of suspension? Under no rule of statutory construction it would be warranted to overthrow an *express right*, specially when it is so fundamental as the one in question, by mere *implied* and *dubious* power of suspension said to be within the power to punish or to expel.

It should be noted that the electing and the removing powers, of the members of the Senate, are not in the same hands. They are elected by the people, while they may be expelled by the Senate.

Though generally the power to expel or remove covers the power to suspend, it does not, when the authority to remove and the authority to appoint or elect are not in the same hands. If not so, the removing power could with the suspension, during which time the seat does not become vacant, deprive the appointive power of his right of exercising this prerogative. This doctrine is now well settled and it seems that it was first laid down in the early case of State *v.* Jersey City (1 Dutcher 536) 25 N. J. L., 536, where the question presented was whether a common council which by law was expressly empowered to expel a member of its body, had the im-

plied power to suspend a member. The Court in answering negatively said:

> "* * * This proceeding amounts to a suspension of the relator from the exercise of his official duties, as a member of that body. *It leaves his constituents unrepresented and without remedy.* Expulsion creates a vacancy that can be supplied by a new election. Suspension from the duties of the office creates no vacancy; the seat is filled, but the occupant is silenced. The charter vests no such power in the council; it would be extraordinary if it did. The power is to expel not to suspend."

This doctrine was followed in the case of Gregory *v.* New York, 113 N. Y., 416, where the Court said:

> "* * * There is nothing in the nature of the power to remove or expel which necessarily and in all cases would include a power to suspend, for in some instances, of which the above case would be a good example, the power to suspend would seem to be very different in its nature from the power to remove, and not necessarily a minor power included in the power of expulsion. *The rights of a constituency might be affected most deeply by the exercise of the power to suspend,* and yet would be in truth untouched by the expulsion of an unworthy representative. * * *"

See also case of Morley *v.* New York, 35 N. Y. S. R., 263, following the doctrine of Gregory v. New York.

It is obvious that, if the power to suspend can not be considered impliedly within the power to expel, the power to punish (which is of minor importance since among other reasons punishment requires but a majority vote while expulsion has to be voted by two-thirds of the members) does not carry with it the power to suspend.

The force of this argumentation cannot be denied. In the New Jersey Case, the Court came to say: "The power to suspend would mean to deprive the constituency of the member suspended of their representation for certain period. Consequently we cannot favor any construction of the law which by a mere inference would deprive a portion of the people of their right to a seat in an elective body."

However, it should be admitted that there are authorities *contra*, which hold that within the power to punish is included the power to suspend.

First we have the *dictum* of this Honorable Su-

preme Court in the case of Kilbourn *v.* Thompson (103 U. S., 189), Justice Miller saying:

> "We have no reason to doubt that the punishment may in a proper case be *imprisonment*, and that it may be for refusal to obey some rule on that subject made by the House for the preservation of order."

And Cushing in his Law and Practice of Legislative Assemblies says:

> "Members may also be suspended by way of punishment, from their functions as such, either in whole or in part or for a limited time. This is a sentence of a milder character than expulsion." (Sec. 280.)
>
> "During the suspension the electors are deprived of the services of their representative without power to supply this place, but the rights of the electors are no more infringed by this proceedings *than by the exercise of the power to imprison.*" (Sec. 627.)
>
> "The suspension of members from the service of the House is another form of punishment." (May, Parliamentary Practice, 53.)

It is noteworthy that in the long history of the Congress of the United States no case has been found after a thorough examination of all the cases given in Hinds' Precedents, where a House of Congress has punished with imprisonment or with suspen-

sion. The only thing near to suspension which we have found is to declare a member in contempt, which according to a Report of the Committee on Privileges and Elections in the case of Senators McLaurin and Fillman (1902) (Hind's Precedents, sec. 1665) carries with it a suspension of his function as such member of the legislative body during the time such member is in contempt. In that case the disorderly behaviour occurred while the Senate was in session and the two guilty Senators were immediately declared in contempt of the Senate. Subsequently, as the Senate continued its session, the question was raised whether the members declared in contempt of the Senate were deprived of their power to vote. The question was not decided until the Committee on Privileges and Elections recommended censure as final action, after giving the above opinion, as to the legal effect of being declared in contempt of the Senate. A portion of the majority, three members in all, submitted views in favor of suspension of the two Senators and discussed the power of the Senate to punish with suspension. A minority of the committee, five members in all, dissented "from so much of the report of the committee as asserts the power

of the Senate to suspend a Senator and thus deprive a State of its vote."

As we see, on this point, as to whether the power to punish carries with it the power of suspension, we have on one side for the affirmative, a mere *dictum* of this Honorable Supreme Court, that the power to punish carries with it the power to imprison, and with this *dictum* as a back-ground, two authors and a portion of the majority of the members of a committee of the Senate in the case above referred to have contended, that if the Senate has the power to punish with imprisonment as declared in that *dictum* of the Supreme Court, it also has the power to punish with suspension, they arguing that "the electors are deprived of the services of their representative without power to supply their place, but the rights of the electors are no more infringed by this proceeding than by an exercise of the power to imprison." Those are at most secondary authorities and they all depend on the truth of the proposition which we have not yet seen discussed, that the Senate or the House of Representatives has power to imprison one of its members as a punishment for disorderly behaviour.

Against these authorities, we have *judicial* authorities which go for the proposition that the power of suspension, inasmuch as it involves such a fundamental power as to deprive a group of electors of their representative, is not to be considered as included by mere implication in a more general power which does not carry with it the fundamental power of depriving a group of electors of their representation.

But it should be pointed out that the above quoted expression of this Honorable Supreme Court which has found its way in the case of Kilbourn *vs.* Thompson only amounts to a *dictum*, as it was not necessary for the resolution of the question involved in the case. And we should notice, that the words of the Court "that this punishment *may in a proper case* be imprisonment, and that it may *be for refusal* to obey some rule on that subject made by the House for the *preservation of order*" only make reference to the punishment of imprisonment as a preventive or protective measure to preserve order, and not as a punitive measure to vindicate the order that has been disturbed. We feel that if this Honorable Supreme Court had in mind the punishment not as protective measure but as a punitive one, it would not have

made such a declaration. It would have paused to consider that an imprisonment, without any qualification and imposed during the time of the sessions of the House, would deprive the member suspended of his prerogatives as a member of the House, to assist in its deliberations and vote in all its proceedings, thus depriving the electorate of their representation in the House. The declaration at most would have been made with the important qualification that the imprisonment should be so executed as not to deprive the member of his right to assist and vote in the deliberations of the House.

There are two classes of suspensions in the law of officers. Suspension made use of as a preventive or protective power pending investigation of charges, and *suspension* made use of as a punitive power, to vindicate the moral order that has been disturbed by the act, object of the punishment. We are not dealing here with the first class of suspensions which might be considered as incidental to the power of each House, to perform the duties and exercise the powers which the Constitution has conferred on them, as was the case already referred to, where a declaration in contempt of the Senate for disorderly behavior in open session of the Senate carried with it temporary suspension during the

term he was declared to be in contempt. (Hinds' Precedents, sec. 1665.) We are dealing exclusively with the suspension as a punitive measure, which is the suspension of the case at bar. If a majority of the Senate has the power to suspend for one year, it has the power to suspend for two or three years, thus covering the whole period of a Legislature, and hence we ask, if this is not virtually to expel the member, an act which by the Constitution has to be approved by the two-thirds of the members of the house. The power of punishment cannot cover anything of the nature of an expulsion or anything which would amount to an expulsion. Suspension, because it is a deprivation of the rights of a member as such member, is of the nature of a temporary expulsion and the longer the suspension the more it virtually amounts to an expulsion.

Finally we quote from the opinion of Justice Johnson the following excerpts: "In the case of Commonwealth *vs.* Barry it was decided that to punish an officer for 'disorderly behavior' such misbehavior must be such as affects the performance of his duties or the legal or ordinary procedure of the body of which he is a member, and not disorderly behavior which affects his character as a private individual.

"In this connection it may be noted that the alleged 'misbehavior' on the part of the petitioner was committed outside of the legislative halls and at a time when there was no session of the Senate; that said alleged 'misbehavior' did not take place in or near the Senate chamber, nor caused any disorder, disturbance, annoyance, or impediment whatever to the orderly and dignified procedure of any session of the Senate; that said 'misbehavior' did not interfere in any manner whatever with the honor, dignity, and efficiency, nor with the orderly proceedings of the Senate; that the petitioner did not know, at the time of the alleged 'misbehavior', that he had been admitted as a member of the Philippine Senate. The question of his admission as a senator had been under discussion for weeks theretofore." (T. of R., pp. 48 and 49.)

"The power to punish for disorderly behavior has never been exercised further than to impose a mere reprimand. We regard the fact that the Congress of the United States has never exercised its power, to *punish* for disorderly behavior, by depriving a member of all his rights, prerogatives, privileges, and emoluments, as strong proof that it did not believe that its power to *punish* justified an order or resolution depriving a member of all of his rights, prerogatives, privileges, and emoluments.

Many cases might be cited showing misbehavior of much more serious character than that charged against the petitioner and where a reprimand only was imposed." (T. of R., pp. 49-50.)

Our conclusion is that the Senate neither in the exercise of its power to punish nor in the exercise of its power to remove has the power to suspend an elective Senator, and that good reasons sustain these propositions.

Admitting that the power to suspend is within the power to punish or within the power to expel, and that consequently the Senate has the power to suspend an elective member, it is submitted that it has not the power to suspend an appointive member.

Our Organic law provides:

> "Senators and Representatives appointed by the Governor-General *shall hold office* until removed by the Governor-General." (Sec. 17.)

For the purpose of our argumentation, we shall even admit that the Senate or the House of Representatives has the power to suspend an *elective* mem-

ber under the power to punish or the power to expel. If so, it would follow that under the power to punish it has the power to suspend an *appointive* member unless section 17, providing that appointive members *shall hold office* until removed by the Governor-General, should prevail over section 18, giving the House a general power to punish all members. *Which section should prevail?*

If appointive members *shall hold office* until removed by the Governor-General, would they be holding office while suspended or temporarily deprived from office by the Senate, and deprived of their right to attend its sessions, to have a voice, to vote, and to receive a salary? Certainly not. It should be remembered that this is not a case of suspension made use of as a preventive or protective measure pending investigation of charges. It is a case of a suspension made use of as a *punitive measure.* The exercise of such punitive power of suspension over an appointive member of the Senate would be to curtail, to say the least, the power of the Governor to have the appointive Senator hold office until removed by him.

> "Suspension from office is a deprivation of the office for the time being." (Am. & Eng. Enc. of Law, page 557.)

"In Kelly *vs.* Cincinnati, 9 Ohio Dec., 612 it was held that a suspension from office for an indefinite time, and lasting for a period of six months, lost its temporary character, ceased to be a suspension, and became a removal.

"In the case of State *vs.* Chamber of Commerce, 20 Wis., 63, it was held that the suspension of a member was a qualified expulsion, and, that whether it was called suspension or expulsion it disfranchised him either temporarily or permanently."

And as pointed out by Justice Johnson: "The resolution does not use the word 'suspend' but does use the word 'deprive.' It provides that the petitioner is 'deprived' of all his prerogatives, etc., for a period of one year * * * If a value can be placed upon his prerogatives, privileges, and emoluments, and if he has been deprived of them, then it must follow that they have been removed from him, or that he has been removed from them. At any rate, the resolution has separated the petitioner and the people whom he represents and deprived them of all of their prerogatives, privileges, and emoluments for the period of one year; and, for all intents and purposes, he and the people whom he represents have been deprived of their prerogatives, privileges, and emoluments, and in effect, have removed from any participation in the legislative affairs of the government." (T. of R., p. 47.)

The appointive Senator that has been suspended might be granted to be a Senator in name, but he is not a Senator in fact, having been temporarily deprived of his powers as such Senator. And the right of the Governor-General of having his appointive Senator holding office till removed by him, is a real right, not an illusory one. If we admit that the Senate can suspend an appointive member, the suspension may be not only for one year but for ten or more years in which case, though the intrusion of the Senate is more striking, the legal aspect of the situation remains unchanged. "Questions of power," says Marshall, *Ch. J.*, in Brown *vs.* Maryland 25 U. S., 12 Wheat., 419, 439 (6 L. ed. 678) "do not depend on the degree to which it may be exercised. If it may be exercised at all, it must be exercised at the will of those in whose hands it is placed." Hence, if we say that the Senate has the power to suspend for one day, it would also have the power to suspend for one year or ten years which is clearly making wholly illusory the right of the Governor-General to have the appointive Senator hold office until removed by him. And conversely if the Senate cannot suspend an appointive member for ten years it cannot suspend for one year. This view is confirmed by decisions holding that an authority hav-

ing no power to remove has no power to suspend. Melaker *vs.* Malley, 41 Kan., 122; State *vs.* Chamber of Commerce, 20 Wis., 63.

In the present case where Senator Alejandrino has been deprived of his prerogatives, privileges and emoluments as such Senator for the period of one year, can it be said that during that time he is holding his office? The answer is evidently in the negative, and proves that with that suspension, the provision of section 17, prescribing that appointive members shall hold office until removed by the Governor-General has been violated with the suspension for one year of Senator Alejandrino.

Section 18 giving power to punish, is a general provision covering elective as well as appointive members. Section 17 making it the right of the Governor-General to have the appointive member hold office until removed by him, is a less general provision as it applies only to appointive members. Granting that the two sections are not entirely in accord as to the power of the Senate to suspend an appointive Senator, section 17 should prevail, being the less general provision.

Finally, as pointed out by Justice Ostrand: "It will be observed that no power to expel or remove appointive members is conferred on the houses of

the Legislature, nor can such power be inferred or implied from the statute, in view of the fact that it is expressly placed in the hands of the Governor-General. The Act does not limit or qualify the term 'remove' and it therefore includes both temporary and permanent removals.

"An examination of the Senate resolution in question shows that in effect it provides for a complete temporary removal of the petitioner. It does not merely exclude him from the floor of the Senate Chamber, but he is also 'deprived of *all* his prerogatives, privileges, and emoluments as such senator,' for the period of one year. As far as he is concerned, his removal from office for that period could not be made more complete. In attempting to exercise the power of such removal, the Senate clearly arrogated to itself powers which it does not possess and which, under the Organic Act, rest in the Chief Executive." (T. of R., pp. 90, 91.)

II

JURISDICTION TO CONSIDER THE QUESTION

It is admitted in the decision of the majority of the Insular Supreme Court that respondents acted wholly outside the scope of their powers when they

suspended Senator Alejandrino for one year. It cannot be denied that in so acting, they encroached into the powers and privileges of the Governor-General, who, under our Organic Act, has the right to have all appointive Senators hold office until removed by him; that in so acting they disregarded the right of representation of the people of the senatorial district whose representation in the Senate, Senator Alejandrino holds; that in so acting they violated the right of the incumbent who, as a citizen and as a senator has the right not to be deprived of his office without due process of law, *i. e.*, the right to be deprived only by a duly authorized authority.

Considering these premises, the question presented is,—Has our Organic Law provided for a check to acts of public officers, wholly outside the scope of their powers, as defined and limited by said Organic Act, and which, furthermore, constitute a violation and an encroachment into the rights and privileges of the Governor-General, into the rights of the electorate, and into the rights of a Senator and a citizen, all of which have their source from our very Organic Act?

The Constitution limits the powers of the three departments of government. And the all-fundamental question as to whether each department of

government shall be its own judge in the interpretation of the limitations set on its powers by the constitution, or whether it is an attribute of the judicial power to enforce the Constitution independently of the interpretation that the legislative and executive departments might have given to their respective powers under the constitution, has ceased to be an open question since the days of the famous Marshall's decision in Marbury *vs.* Madison (1 Cranch, U. S., 137 (1803). In the language of Professor McLaughlin of the Chicago University, the underlying theory of Marshall's decision is that:

> "If the Constitution was law, the Courts must place their interpretation on it and not recognize the rights of the legislative body to determine its own rights under it" (The Courts, the Constitution and Parties, pp. 9-10.)

Or, as another writer in the Harvard Law Review puts it:

> "The Constitution could be law in the English sense only if some court had power to interpret and enforce it; and, while the courts might not 'ignore,' still they must, if in their judgment erroneous, disregard a merely legislative interpretation of the Constitution. The meaning of the Constitution *as law* could be determined only by the judgment of some court, and Congress, under the Constitution, was not a

court." (Herbert Pope in an article entitled 'The fundamental law and the power of courts,' 27 Harvard Law Review, 45, 47.)[1]

Having these fundamental considerations in mind, we ask with Justice Johnson in his dissenting opinion:

> Shall it be said, in the face of the provisions of the Jones Law, and of the acknowledged right of the judicial department of the government to decide in proper cases, that statutes which have been passed by both branches of the Legislature and approved by the Governor-General are illegal and unconstitutional, and that said department cannot give a remedy when the citizen has been deprived of his life or property without lawful authority and without due compensation, simply because the executive or legislative department has ordered it? (Transcript of Record, p. 68.)

At the outset, it will be of aid for a thorough study of the merits of the issue and to be in position

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(1) Further on, the same writer, on the same point, has the following very illuminating considerations to offer as to the real basis and ground for Marshall's decision:

> "His conclusion was that the courts were bound by the Constitution, and, for him, that meant, as a matter of course, the assumption by the courts of the power to interpret the Constitution and enforce it as thus interpreted. If the courts were not thus bound to interpret and

of distinguishing the instant case from the decisions arrived at in similar cases, to determine the sources of judicial review. That is, the basis that the Judiciary has to review the omissions, actions or decisions of public officers.

An officer of the executive or legislative department may be invested by the Constitution or by an Act of the Legislature with certain functions and duties. The Constitution or Act of the Legislature creating such office may not expressly provide for any appeal to the Courts, from any omission, action, or decision of said officer in the exercise of his functions. In such a case, on what possible grounds would the courts step into the matter and review the omission, action, or decision of the said officer?

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enforce the Constitution, it must follow, either that the Constitution was not the expression of a fundamental law, or that the acts of Congress should be treated as the judgments of a superior court authorized to determine conclusively the meaning and effect of that law. That the Constitution did establish a fundamental law was Marshall's first proposition; that the courts were bound by it was his second proposition, and his conclusion, or assumption, was that this required the courts to hold void legislative acts which the courts found to be inconsistent with such law. He did not consider the possibility that the acts of Congress might be regarded as the judgments

Two are the possible sources: (a)—The express or implied intention of the people as embodied in the Constitution itself; (b)—And the express or implied intention of the Legislature, as embodied in the Act creating and defining the particular public office, to have the Judiciary exercise a certain reviewing power and for certain exceptional cases.

In our constitution we have in the first place (a)—the so-called Bill of Rights of the Constitu-

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of a court superior to the Supreme Court itself. Such a proposition must necessarily mean, not only that the courts provided for by the Constitution did not constitute an independent and coordinate branch of the Government, but that the courts were not in fact vested with all of the judicial power. It involved not only a denial of the independence of the judiciary but a denial of the separation of the legislative and judicial powers. It is not strange that Marshall did not stop to consider such a possibility. (Pp. 50, 51.)

"It was admitted, of course, that Congress, in acting, ought to consider and decide whether its acts were consistent with the Constitution. But it could not decide such questions as a court for the simple reason that, under the Constitution, it had no power to exercise judicial functions. That is the true significance of the separation of powers under the Constitution. The legislative and executive powers must of necessity interpret the Constitution, and, in the absence of a judicial decision, act upon their interpretation of it, but such interpretation did

tion, specially the "due process" clause, and (b)—all the provisions of our Organic Act, defining and limiting the powers of the executive officers and of the Legislative Department and in the present case, all the provisions of our Organic Act which imply the negation of the power of the Senate to suspend appointive senators.

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not and could not declare the Constitution as law. The courts also must interpret the Constitution, and they too must act on their interpretation of it, but such action by the courts meant the declaration and enforcement of their interpretation as law. That is what courts are for; their judgment is conclusive upon the parties before them, and upon other parties in like cases who come after them. The conclusive judicial determination of the fundamental law, as of all law, is vested in the highest court, and as the court decides so is the law enforced * * * In this country, where the legislative body is a legislature merely, and not a court, the legislature may have an opinion about the fundamental law, and may express it, but the law is not necessarily enforced according to such declaration of it. Our highest court, which is independent of the legislative power, has also the right and duty, in a proper case, to express an opinion upon the fundamental law, and as the law is expressed by the court so is it enforced. That is what makes it law indeed. The expression of the legislature remains an opinion; the expression of the court becomes the law." (Pp. 51, 52.)

As we have just seen it is an attribute of the judiciary to enforce the Constitution independently of the interpretation that the legislative and executive departments might have given to their respective powers under the constitution, and to the legality of their acts under the limitations set by the Bill of Rights. It means, in other words, that it was the *intention* of the people when the constitution was approved, that the Judiciary should step in, in all cases where an officer of the legislative or executive departments of the government has overstepped the limits of its own powers as defined by the constitution, or has transgressed the limitations in the Bill of Rights of the Constitution.

But at the same time that the constitution has fixed certain limitations upon the powers of the departments of the government, and has subjected to the limitations of the Bill of Rights the acts of any person whatsoever, including public officers; on the other hand, the constitution has granted the departments of the government sufficient discretion upon matters of their respective exclusive jurisdiction. In such cases mere errors of judgment and even instances of abuse of discretion would not justify the

Judiciary to interfere, provided always the limitations of the Constitution above referred to are not overstepped.

It is consequently provided in the constitution that "all legislative powers shall be vested in a Congress of the United States" and all "the executive power shall be vested in a President of the United States."[2] And because of these considerations, it is now well settled that the Judicial Power will not interfere with the acts of another department when such acts are purely political or non-justiciable[3] and that the judicial power will not by mandamus or other writs, attempt to control the exercise

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(2) Similar provisions are found in the Organic Act of the Philippine Islands: "That general legislative powers in the Philippines, except as herein otherwise provided, shall be vested in a legislature" (sec. 12). "That the Supreme executive power shall be vested in an executive officer, whose official title shall be the Governor-General of the Philippine Islands" (sec. 21).

(3) Luther *vs.* Borden, 7 Howard 1, is a case where it was held by this Supreme Court that it rested with the political power and not with the Judiciary to decide whether the Charter Government of a state has been displaced or not; The Prize Cases (2 Black) might also be given as an illustration of this set of cases. There it was held that it was a purely political question entirely committed to the President to decide whether or not there was a state of war.

by the other departments of the government of executive powers or duties conferred upon them by the constitution, or by a statute.

An illustration that courts will not interfere in the exercise by one department of its political and executive duties is the case of Mississippi *vs.* Johnson (4 Wall. 475), where this Supreme Court declined to issue the writ of injunction petitioned by the State of Mississippi against the President of the United States to restrain him from carrying into effect an act of Congress alleged to be unconstitutional. The court went on the ground that the duty imposed by the Reconstruction Act upon the President was not a mere ministerial duty but a political and executive one,[4] and after relying on the doctrine that courts will not enforce the performance by public

(4) Quoting from the decision: "Very different is the duty of the President in the exercise of the power to see that the laws are faithfully executed, and among these laws the acts named in the bill. By the first of these acts he is required to assign generals to command in the several military districts, and to detail sufficient military force to enable such officers to discharge their duties under the law. By the supplementary act, other duties are imposed on the several commanding generals, and these duties must necessarily be performed under the supervision of the President as Commander-in-Chief. The duty thus imposed on the President is in no just sense ministerial. *It is purely executive and political.*" (P. 499.) (Italics ours.)

officers of their political and executive duties, it held that in the same way it would not restrain a public officer from exercising a political and executive duty alleged to be unconstitutional. In the words of this Supreme Court:

> "It is true that in the instance before us the interposition of the court is not sought to enforce action by the Executive under constitutional legislation, but to restrain such action under legislation alleged to be unconstitutional. But we are unable to perceive that this circumstance takes the case out of the general principles which forbid judicial interference with the exercise of executive discretion." (p. 499).

But, moreover, this case must be distinguished from the case at bar, in that, in the instant case private rights are affected, while in that case no private rights were affected even after the President had enforced the Reconstruction Act which was alleged to be unconstitutional.

Furthermore, the language of this Court in that case, conveying the idea to the effect that the President of the United States will never be restrained in its action by the Judicial Department, can hardly be regarded anything but a *dictum*. "In any event," in the words of Justice Ostrand in his dissenting opinion, "if it is to be taken as authority for the proposition that the United States Supreme

Court may not prevent officers or members of Congress from carrying into effect an unconstitutional resolution, it is definitely overruled by the decision in the case of Kilbourn *vs.* Thompson (103 U. S., 168)" which we shall take notice further on. (T. of R., p. 79.)[5]

Very properly, it is also a well settled doctrine that questions as to whether a bill has been duly passed by a legislative body are of the exclusive ju-

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(5) Another illustration, is found in the case of Barcelon *vs.* Baker (5 Phil., 87) which is a petition for habeas corpus. Section 5 of the Act of Congress of July 1, 1902, conferred on the Governor-General the power to suspend the writ whenever the public safety might require it in cases of rebellion, insurrection, or invasion, and the case involved the question as to whether the courts may review the decision of the Governor-General in suspending the privilege of the writ. The court held that "whenever a statute gives discretionary power to a person to be exercised by him upon his own opinion on certain facts, such a statute constitutes him the sole and exclusive judge of the existence of those facts;" and that when the Governor-General, "with the approval of the Philippine Commission declares that a state of rebellion, insurrection, or invasion exists, the declaration or conclusion is conclusive against the judicial department of the government." The writ was therefore denied. But even where the Court properly held that it would not review the decision of the Governor-General on matters of its own jurisdiction, it inquired whether the action of

risdiction of the respective houses, and in all these cases mandamus against the presiding officer of the legislative house has been denied, on the well-taken ground that courts will not "interfere with either of the coordinate departments of the government *in the legitimate exercise of their jurisdiction and powers.*" (*Ex parte* Echols, 1886, 39 Ala., 698; State *vs.* Bolte, 1889, 151 Mo., 362. *See also* Turnbull *vs.* Giddings, 95 Mich., 314, where it was held that mandamus will not lie against the President of the Senate or against the Speaker and Secretary of the House to compel them to record in the Legislative journal a certain protest presented by a member which was rejected by both houses.)

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the Governor-General was beyond his powers, as it is evidenced by the following words of the Court:

> "(1) Admitting the fact that Congress had authority to confer upon the President or the Governor-General and the Philippine Commission authority to suspend the privilege of the writ of habeas corpus, was such authority actually conferred? and
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> "(2) Did the Governor-General and the Philippine Commission acting under such authority act in conformance with such authority? (5 Phil., 96.)

And only after having assumed jurisdiction of the case, it became convinced that the action of the Governor-General was within its own powers, was the writ denied.

The Constitution has also thought it proper to confine to the exclusive jurisdiction of each house of the Legislative Department to be "the Judge of the Elections, Returns and Qualifications of its own members" and to "determine the Rule of its Proceedings, punish its Members for disorderly Behaviour, and with the concurrence of two thirds, expel a member." * It has consequently been held that where a legislative body, with express or implied power to expel a member, exercises its power to expel a member, that the reasons for the expulsion, and the question whether a member was duly heard before being expelled, could not be inquired into by the courts, on the ground that "if the power exists, the house must necessarily be the sole judge of the exigency which may justify and require its exercise" (Hiss *vs.* Bartlett [1853] 69 Mass., 468), and expressed somewhat differently, this is so because the judicial department had no power "to revise even the most arbitrary and unfair action of the legislative department, or of either house thereof, taken in pursuance of the power committed exclusively to that

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(6) Art. I, Sec. 5 (1), (2), of the U. S. Constitution; Sec. 18, Organic Act of the Philippine Islands; with the only difference that in our Organic Act it appears the word "elective" between the words "expel a .... member."

department by the constitution," the power to expel conferred by the Constitution upon each House of the legislative body not being conditioned to a proper and a fair exercise of the power. (French *vs.* Senate [1905] 146 Cal., 604.)

Also, the power of punishment for disorderly behavior is not conditioned to a proper exercise of the power. The legislative house may punish a member for disorderly behaviour, and in the exercise of such a power, even though it be arbitrary, the legislative house will not be subjected to interference by the Courts. But if under the guise of punishment, the legislative house suspends a member, a power not included under its power to punish, the same would be something more than an abuse of discretion and good judgment in the exercise of the power to punish, but a real exercise of a power not conferred by the constitution upon the legislative house. We would then have a case of a department of the government overstepping the limits of its powers as set out in the constitution and which, as in this case, amounts to an encroachment into the powers of the Governor-General. And because the Constitution would be violated, the Judiciary would have a good ground of interfering in the matter.

The mere fact that an officer has not complied

with duties entrusted to him by an Act of the Legislature, is not of itself a sufficient ground to have the courts intervene in the matter, unless it appears that it was the *intention* of the legislature, as embodied in the Act creating and defining the particular public office, to have the judiciary exercise a certain reviewing power. If the legislature as such violates its own Act, it would be absurd to ask from the judiciary to control the legislature.[7] In the same way, the legislature may impose upon the Governor-General or any other public officer certain duties and powers and be its wish that in the exercise and non- exercise of such a duty the said public officer be absolutely beyond the control of the judiciary. In such a case, the judiciary would have no ground to

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(7) In the case of Abueva *vs.* Wood (22 Off. Gaz., P. I., 667) also relied by the decision of the Insular Supreme Court is found the following: "When the legislative department of the government imposes upon its officers the performance of certain duties which are not *prohibited by the organic law of the land*, the performance, the non-performance or the manner of the performance is under the direct control of the legislature, and such officers are not subject to the direction of the courts."

Mandamus in this case was sought to be directed against the Governor-General, Insular Auditor, and Officers of the Independence Commission which is a mere agency of the Legislature. The mandamus was asked to compel the respondents to exhibit to the pe-

intervene. This was exactly the underlying theory of the three cases more stressly relied upon by the majority of the Insular Supreme Court; namely, Severino *vs.* Governor-General (1910) 16 Phil. 366; Perfecto *vs.* Wood (No. 20867 of the Insular Supreme Court promulgated Jan. 25, 1924 not published) and Sutherland *vs.* Governor of Michigan (1874) 29 Mich., 320 which we will now proceed to discuss.

The first case related to an application for mandamus against the Governor-General to compel him to call a special election as provided by law. It can readily be noted that the duty of the Governor in that case was not imposed by the constitution. It was a mere political duty—imposed by an act of the Legislature—to call, in certain cases, for special elections of municipal officers. No constitutional duty

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titioners and to permit them to examine all the vouchers relating to expenses of the Independence Commission. Was there a constitutional or a statutory duty on these officers to permit the petitioners to examine all the vouchers relating to expenses of the Independence Commission? This question was readily answered in the negative, the Supreme Court saying on this point as to the Govenor-General:

> "Whether such inspection and examination should be granted, lies within the absolute discretion of the Governor-General." (Decision, p. 18.)

nor a corresponding constitutional right was violated. Hence, judicial control could not be had, under the inherent attribute of the judiciary to uphold the constitution, nor under the law imposing that duty upon the Governor-General. It is a mere question of statutory interpretation, whether under our system of government of three different independent branches, we should infer that the legislature intended that the judiciary should control and see to it that the head of the executive department fulfills his ministerial duties. And the Court in that case went on the simple ground that it was not the intention of the Legislature to have the judiciary control the Governor-General in the exercise of a simple statutory duty.

The Court said:

> "When the Philippine Legislative body confers upon the Governor powers and duties, it does so for the reason that he is in a better position to know the needs of the country than any other member of the executive department, and with the full confidence that he will perform such duties, under his official oath, as his best judgment dictates. If this had not been the intention of the Legislature, they could have placed the duty upon some other official of the executive department."

The case of Perfecto *vs.* Wood, also relied upon by the Insular Supreme Court as controlling on this

case (T. of R. pp. 38, 39) was also a mandamus case against the Governor to compel him to call for special elections.

Sutherland *vs.* Governor of Michigan, *supra*, related to an application for mandamus against the Governor to compel him to perform a duty imposed upon him by statute. The statute required the governor to issue a certificate of the completion of the construction of the Postage Lake and Lake Superior Ship Canal. The statute required the governor to issue the certificate when he should be satisfied *that the work had been done in conformity of the law.* The duty devolving upon the governor was therefore clearly discretional and this was recognized by the court, and though there is in the decision a line of reasoning planting the decision on additional and broader grounds, the underlying theory taken by the court was the simple ground that it was not the intention of the Legislature when it imposed the said duty upon the Governor to have him under the supervising powers of the Judiciary, as it is evidenced by the following:

> "It is not customary in our republican government to confer upon the governor duties merely ministerial, and in the performance of which he is to be left to no discretion whatever; and the presumption in all cases must be, where a duty is devolved upon

> the chief executive of the State rather than upon an inferior officer, that it is so because his superior judgment, discretion, and sense of responsibility were confided in for a more accurate, faithful, and discreet performance than could be relied upon if the duty were devolved upon an officer chosen for inferior duties. And if we concede that cases may be pointed out in which it is manifest that the governor is left to no discretion the present is certainly not among them, for here, by law, he is required to judge, on a personal inspection of the work, and must give his certificate on his own judgment, and not on that of any other person, officer or department."

It should not be presumed that the legislature has imposed upon the executive head of the Government a mere ministerial duty. But if in a given case, the duty imposed upon the Governor be clearly a ministerial one, and if it were also clear that the intention of the Legislature was to give the Judiciary a control over such particular case of open disregard of the mandates of the Legislature, courts have not hesitated to step into the matter and give a remedy. And it is on this ground that the courts of last resort in the states of Alabama, California, Colorado, Kansas, Maryland, Montana, Nebraska, Nevada, North Carolina, Ohio, and Wyoming have allowed writs of mandamus to the governors of their States for the performance of clear ministerial

duties. Also, because of such an open disregard of a mere ministerial duty imposed by statute, mandamus has been awarded against the very Speaker of the House of Representatives of a State, to compel him to certify to the comptroller of public accounts the amount to which the petitioner was entitled, as a member of said house for mileage or *per diem* compensation. *Ex Parte* Pickett, 24 Ala., 91.[8] And numerous cases can be cited where a writ of mandamus has been granted to impose action upon secretaries of the executive department, in cases of clear disregard of mere ministerial duties. Kendall *vs.* U. S. (12 Pet. 527) and Marbury *vs.* Madison (1 Cranch, 137) in which case in the words of the U. S. Supreme Court in the case of Mississippi *vs.* Johnson (4 Wall., 475) "it was held that the performance of this duty imposed by law on the Secre-

(8) Similar cases are: State vs. Elder (31 Neb., 169), where the writ was issued to compel the Speaker to open and publish returns of the general election. State vs. Moffitt (5 Ohio, 350), where mandamus was held to lie to the Speaker of the House to compel him to certify the election and appointment of officers. Wolfe vs. McCaull (76 Va., 87), where the writ was issued to compel the Keeper of the Rolls of the House of Delegates to print and publish a bill passed by the Legislature and upon request to furnish a copy thereof properly certified.

tary of State might be enforced by mandamus issuing from a court having jurisdiction."

It must also be noted that even where a court would hesitate to command the high officers of a co-ordinate department to comply with a duty imposed upon him by law, we have been unable to find a single case where a court has abstained to interfere where the duty involved was imposed by the Constitution. In the case of Barnard *vs.* Taggart, 66 N. H. 362; 25 L. R. A. 613, a writ of mandamus was issued to compel defendant, who was the President of the Senate, to assume the office of Governor of the State it being provided by the constitution of the State that the President of the Senate should assume the office of Governor "whenever the chair of the Governor shall become vacant by reason of his death, absence from the State, or otherwise" and after it was declared in that case that the illness of the Governor of the State which disabled him from performing the duties of his office constituted a vacancy during which the president of the Senate should exercise the power of the office of Governor of the State.

It is also very important to note that even where courts hesitate to command a public officer to comply with a duty imposed by law, it has never

hesitated to give a remedy even as against an act of the Governor-General and of a house of the legislature where the said acts are illegal, as contrary to the statute. An illustration of this attitude is the case of Borromeo *vs.* Mariano, 41 Phil., 343 where by the concurrent action of the Governor-General, pretending exercise of his appointing power, and the Senate, under the alleged exercise of its power to advise and give its consent to the appointments made by the Governor-General, transferred petitioner, a Judge of First Instance, against his will, from one judicial district to another. The Governor-General insisted on carrying out the transfer and the petitioner, against his will, was ousted from his position as judge of the twenty-first district, and respondent, the one newly appointed to succeed the petitioner, was given possession of the office. It was then that petitioner appealed for action to the Insular Supreme Court, which after a careful consideration of the case declared the new appointment and transfer carried out by the Governor-General with the advice and consent of the Senate, to be illegal, null and void, as being contrary to an act of the Legislature (sec. 155, Adminsitrative Code) and it was consequently declared that the petitioner had a right to the possession of the office, and that respondent be consequently ousted from said office and petitioner be

given possession of the same. Here we have a case where the Supreme Court passed upon the merits as to the legality of the action of both the Senate and the Governor-General. The Court found it to be contrary to an act of the Legislature, and the Supreme Court had no hesitation in declaring the same illegal and of giving the necessary remedies to vindicate the rights of the petitioner. It is true that neither the Governor-General nor the Senate were made a party in that action. But nevertheless, the reviewing power exercised by the Supreme Court in that case over the action of the Governor and the Senate is just as complete and thorough as the reviewing power sought in the instant proceedings. The real effect of the judgment in that case was to revoke the action of the Governor and the Senate.

If, as we have just seen, courts do not hesitate to give the proper remedy for acts of public officers that are merely illegal, it is not at all surprising to find the courts in every case, except in this instant proceeding, decidedly prompt to step in, where the acts of the officers of a co-ordinate department of the government are in excess of their authority under the Constitution.

The doctrine of non-interference by the judiciary with the other departments of the government,

rests on the ground that each department should be supreme and independent of each other *within the limits of its jurisdiction and powers.* It follows that the doctrine does not apply to cases where a department goes beyond its legitimate sphere (Bailey on Mandamus, p. 926) and as pointed out by Justice Ostrand in his dissenting opinion, this is, indeed, the first time any court has ever held that in such cases there may be no judicial interference. (T. of R., p. 76.)

In the instant proceeding it is admitted in the decision of the majority of the Insular Supreme Court that the Senate acted wholly outside the scope of its powers when it suspended the petitioner for one year. Moreover, it cannot be denied that by doing so, the Senate had encroached into the powers of the Governor-General, and disregarded the right of representation of a Senatorial District.

Having these as premises it is submitted that the controlling cases are Kilbourn *vs.* Thompson, 103 U. S., 168, and a numberless series of cases where it had been held "that all governmental officers, departments or agencies are subject to judicial restraint when they act *in excess* of their authority either statutory or constitutional, by virtue of which citizens are deprived of their rights" (Osborn *vs.* U.

S. Bank, 9 Wheaton (U. S.), 739; Board of Liquidation *vs.* McComb, 92 U. S., 531; United States *vs.* Lee, 106 U. S., 196; Virginia Cases, 114 U. S., 311; Regan *vs.* Farmers & Co., 154 U. S., 362; Smith *vs.* Ames, 169 U. S., 466, *Ex parte* Young, 209 U. S., 123; Philadelphia Co. *vs.* Stimson, 223 U. S., 605; Barcelon *vs.* Baker, 5 Phil., 141; Forbes *vs.* Chuoco Tiaco, 16 Phil. 534; *In re* McCulloch Dick, 38 Phil., 141; Concepcion *vs.* Paredes, 42 Phil., 599, and Borromeo *vs.* Mariano, 41 Phil., 343.)

Kilbourn *vs.* Thompson (103 U. S. 168) was an action for false imprisonment, brought against the Sergeant-at-arms of the House of Representatives, the Speaker, and members of a special committee when by a resolution of the House was instructed to make certain investigations. The petitioner in that case was called by the committee to testify, and on his refusal, he was condemned for contempt, arrested, and deprived of his liberty until he would accede to answer and produce certain papers. Petitioner here invoked the aid of the Court to declare illegal the action of the respondents. The due process clause was thus invoked and the Court acceded and declared that the investigation in that case was an inquiry into private affairs of the citizen, and so outside of the jurisdiction of the Court, and that the

House has no power to punish for contumacy a witness unless his testimony is required in a matter into which that House has jurisdiction to inquire. The court further held that "the House of Representatives is not the final judge of its own power and privileges in cases in which the rights and liberties of the subject are concerned, but the legality of its action may be examined and determined by this court."

In our Insular reports we also find a number of decisions for the doctrine that even the Governor-General is subject to the reviewing power of the courts where he has exceeded his own powers. To the case of Barcelon *vs.* Baker (5 Phil., 87) which we had already occasion to notice (footnote 5), we shall only take space to notice here three very important cases: Forbes *vs.* Chuoco Tiaco (16 Phil., 534); *In re* McCulloch Dick (38 Phil., 41), and Concepcion *vs.* Paredes (42 Phil., 599.)

Forbes *vs.* Chuoco Tiaco, *supra*, was a case brought by a deported chinese against the Governor-General for damages incurred because of the deportation which was alleged to have been illegal, the Governor having no power to deport. The majority of the Court held that the Governor had the power to deport. A concurring opinion went on the ground that even when the deportation was illegal, the Gov-

ernor-General was not liable for damages in that case, he being liable only "when he acts in a case so clearly outside of his power and authority that he cannot be said to have exercised jurisdiction and judgment, that is, the judicial faculty." As we see, if judgment was not given against the Governor, it was not because of his high position, but on the simple ground that he was not liable. The Court in reaching the conclusion that the deportation was valid had necessarily to review the power of the Governor-General in that case, and hence to that extent the Judiciary was exercising a reviewing power over the Governor. In such case the source of the control by the Judiciary was the due process clause of the constitution. If the deportation had been illegal to that much the petitioner had been deprived of his liberty without due process.

In the case of *In re* McCulloch Dick, *supra*, petitioner claimed to have been illegaly detained by the Governor-General who had decided to deport him from the Islands. The court instead of disposing of the case by a mere declaration of lack of jurisdiction, went on into the merits of the case, and to that extent exercised a reviewing power over the Governor-General. Again here the due process clause was invoked, and the Court had to take cognizance of the

case, not only reviewing the question of law as to the power of the Governor-General to deport aliens, but also the facts as to the point whether the petitioner was an alien or not.

Concepcion *vs.* Paredes, *supra*, was a petition for a writ of prohibition commanding the respondent Secretary of Justice to desist from carrying into effect the provisions of Act No. 2941 requiring the Judges of the Courts of First Instance to draw lots every five years for exchange of districts. The Court held that the act constituted an encroachment by the Legislature into the Governor-General's power of appointment and was, therefore, unconstitutional; and the Supreme Court did not hesitate to enjoin the Secretary of Justice to carry out the provisions of the void and unconstitutional act.

But it is contended in the opinion of the majority of the Insular Supreme Court

> "that looking through the form of the action to the substance, this is, in effect, a suit instituted by one member of the Philippine Senate against the Philippine Senate and certain of its official employees." (T. of R., p. 31.)

As Justice Ostrand points out in his dissenting opinion:

> "This might be true if the act complained of was an act within the jurisdiction of the Senate, but

such is not the case here. A practical illustration may, perhaps, make the point clear. Let us suppose that a majority of the members of the Senate should agree to commit a crime against another member and should pass a senatorial resolution to that effect. Would that, in anything but form, constitute a senatorial act? And suppose the same members should proceed to carry the resolution into effect, would not an action lie against such members and could that, in substance, be regarded as an action against the Senate? The questions answer themselves, and though in the present case the illegal act does not constitute a crime, the analogy is, nevertheless, obvious; the distinction is one without a difference." (T. of R., pp. 92, 93.)

A similar contention to that of the majority of the Insular Supreme Court has been time and again insisted in this Supreme Court. High public executive officers of the United States have tried to shield their actions from any interference of the courts with the doctrine excepting the United States from suit. In the words of this Court:

"If the conduct of the defendant constitutes an unwarrantable interference with property of the complainant, its resort to equity for protection is not to be defeated upon the ground that the suit is one against the United States. The exemption of the United States from suit does not protect its officers from personal liability to persons whose rights of property they have wrongfully invaded. Little v.

Barreme, 2 Cranch, 170, 2 L. ed. 243; United States v. Lee, 106 U. S. 196, 220, 221, 37 L. ed. 171, 181, 182, 1 Sup. Ct. Rep. 240; Belknap v. Schild, 161 U. S. 10, 18, 40 L. ed. 599, 601, 16 Sup. Ct. Rep. 443; Tindal v. Wesley, 167 U. S. 204, 42 L. ed. 137, 17 Sup. Ct. Rep. 770; Scanton v. Wheeler, 179 U. S. 141, 152, 45 L. ed. 126, 133, 21 Sup. Ct. Rep. 48. And in cases of an injury threatened by his illegal action, the officer cannot claim immunity from injunction process. The principle has frequently been applied with respect to state officers seeking to enforce unconstitutional enactments. Osborn v. Bank of United States, Wheat. 738, 243, 868, 6 L. ed. 204, 229, 235; Davis v. Gray, 16 Wall. 203, 21 L. ed., 447; Pennoyer v. McConnaughy, 140 U. S. 1, 10, 35 L. ed. 363, 365, 11 Sup. Ct. Rep. 699; Scott v. Donald, 165 U. S. 107, 112, 41 L. ed. 648, 653, 17 Sup. Ct. Rep. 262; Smith v. Ames, 169 U. S. 466, 42 L. ed. 819, 18 Sup. Ct. Rep. 418; Ex parte Young, 209 U. S. 123, 159, 160, 52 L. ed. 714, 728, 729, 13 L. R. A. (N. S.) 932, 28 Sup. Ct. Rep. 441, 14 A. & E. Ann. Cas. 764; Ludwig v. Western U. Teleg. Co., 216 U. S. 146, 54 L. ed. 423, 30 Sup. Ct. Rep. 280; Herndon v. Chicago, R. I. & P. R. Co., 218 U. S. 135, 155, 54 L. ed. 970, 976, 30 Sup. Ct. Rep. 633; Hopkins v. Clemson Agri. College, 221 U. S. 636, 643-645, 55 L. ed. 890, 894, 895, 35 L. R. A. (N. S.) 243, 31 Sup. Ct. Rep. 654. And it is equally applicable to a Federal officer acting in excess of his authority or under an authority not validly conferred. Noble v. Union River Logging R. Co. 147 U. S. 165, 171, 172, 37 L. ed. 123, 125, 126, 13 Sup. Ct. Rep. 271; American School v. McAnnulty, 187 U. S. 94, 47 L. ed. 90, 23 Sup. Ct. Rep. 33.

> "The complainant did not ask the court to interfere with the official discretion of the Secretary of War, but challenged his authority to do the things of which complaint was made. The suit rests upon the charge of abuse of power, and its merits must be determined accordingly; it is not a suit against the United States." (Philadelphia Co. v. Stimson, 223 U. S. 605.)

We have made an exhaustive review of all the cases cited in the majority opinion of the Insular Supreme Court, and it is submitted that none of them goes for the proposition that because the respondents are members or officers of another department the courts have no power to restrain or prohibit them from carrying into effect an unconstitutional and, therefore, void act of that department. In fact, the instant case is the first time that a court has abstained itself to uphold the constitution where private rights are involved and where one department of the government has exceeded its powers under the Constitution. Such a decision, we understand, far from upholding the theory of separation of powers disregards the same. Under it the Governor-General may assume legislative and judicial

functions, and his orders would not have the check of the Constitution which receives its life and restrictive force from the Judiciary; the legislature may exercise, without any restriction, executive and judicial functions, and exercise powers which the people has reserved for themselves and not delegated to any department of the Government, as the power to suspend Senators and Representatives; finally, by it, the Judiciary declines to comply with its all-fundamental function of upholding the Constitution, leaving the other two departments of the Government free to act beyond the limit set by the Constitution.

It is not asked that the Judiciary should encroach into the proper functions of the Executive and the Legislature. It is not asked that the Judiciary should assert a superiority for itself. It is only asked that the Constitution be upheld. It is only asked that by virtue of the very theory of Separation of Powers, every department should confine and commit itself to the exercise of its own functions and should not go beyond its own powers as by making illegal suspensions, and that every department should fulfill its own duties, and the Judiciary uphold the Constitution.

We close this brief, by inviting the attention of this Court to the very forceful and illuminating dissenting opinions of Justices Johnson and Ostrand.

Respectfully submitted,

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Manila, ...

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SUPREME COURT OF THE UNITED STATES.

No. 309.—October Term, 1925.

José Alejandrino, Petitioner, *vs.* Manuel L. Quezon, Isabelo De Los Rayes, Santiago Fonacier, et al.	On Writ of Certiorari to the Supreme Court of the Philippine Islands.

[June 7, 1926.]

Mr. Chief Justice Taft delivered the opinion of the Court.

This cause was brought here by certiorari under section 5 of the Act of September 6, 1916, to amend the Judicial Code, c. 448, 39 Stat. 726. That Act repealed section 248 of the Judicial Code, re-enacted by section 27 of the so-called Philippine Autonomy Act, ch. 419, 39 Stat. 545, 555, which gave jurisdiction to this Court to examine by writ of error the final judgments and decrees of the Supreme Court of the Islands in all cases in which the constitution or any statute, treaty, title or privilege of the United States was involved, or in causes in which the value in controversy exceeded $25,000; and a review of such judgments by writ of certiorari was substituted. The certiorari here was granted because a statute of the United States, to wit, the Autonomy Act, was involved.

This proceeding was an original action in the Supreme Court of the Philippines, brought by José Alejandrino, a Senator appointed by the Governor General, seeking a mandamus and an injunction against the twenty-two elected members of the Senate, including its President, its Secretary, its Sergeant at Arms, and its Paymaster. The occasion for the proceeding was a resolution of the Senate, passed February 5, 1924, and reading as follows:

"Resolved: That the Honorable Jose Alejandrino, Senator from the Twelfth District, be, and he is hereby, declared guilty of disorderly conduct and flagrant violation of the privileges of the Senate for having treacherously assaulted the Honorable Vicente de Vera, Senator for the Sixth District on the occasion of certain

phrases being uttered by the latter in the course of the debate regarding the credentials of said Mr. Alejandrino.

"Resolved further: That the Honorable Jose Alejandrino be, as he is hereby, deprived of all of his prerogatives, privileges and emoluments as such Senator during one year from the first of January, nineteen hundred and twenty-four;

"And resolved, lastly: That the said Honorable Jose Alejandrino, being a Senator appointed by the Governor General of these Islands, a copy of this resolution be furnished said Governor-General for his information."

The petitioner charged that this resolution was unconstitutional and of no effect and asked a preliminary injunction against the respondents enjoining them from executing the resolution, a judicial declaration that it was null and void, and a final order of mandamus against the respondent ordering them to recognize the rights of the petitioner and his office as Senator, and all of his prerogatives, privileges and emoluments and prohibiting them from carrying the order of suspension into effect. The respondents made a special appearance through the Attorney General and objected on demurrer to the court's jurisdiction. The Court held that it was without jurisdiction, sustained the demurrer, and as it did not appear that the petition could be amended so as to state a cause of action, it was dismissed without costs.

José Alejandrino was appointed under the Philippine Autonomy Act by the Governor-General a Senator to represent the Twelfth District, a district composed of non-Christian tribes in the northern part of Luzon and the Moros in the Department of Mindanao and Sulu. At the time he took his seat in the Senate, another Senator, Vicente de Vera, made a speech on the credentials of Senator Alejandrino in which he said some things which Alejandrino resented. At night and after the session of the Senate concluded, and away from the Senate chamber, Alejandrino assaulted de Vera because of his remarks made in the Senate. The resolution complained of was because of this assault.

By section 12 of the Autonomy Act, the general legislative powers in the Philippines, with certain exceptions, are vested in a Legislature consisting of two Houses, the Senate and the House of Representatives. The Senate is composed of twenty-four members from twelve Senate districts, twenty-two of them are elected, and one, the Twelfth District, already referred to, has two Senators,

appointed by the Governor General. By section 17, a Senator appointed by the Governor General holds office until removed by the Governor General. Section 18 provides that the Senate and House respectively shall be the sole judges of the elections, returns and qualifications of their elective members, and each House may determine the rules of its proceedings, punish its members for disorderly behavior, and with the concurrence of two-thirds expel an elective member. The Senators and Representatives shall receive an annual compensation for their services to be ascertained by law and paid out of the Treasury of the Philippine Islands. Senators and Representatives shall in all cases, except treason, felony and breach of the peace, be privileged from arrest during their attendance at the session of their respective Houses and in going to and returning from the same, and for any speech or debate in either House they shall not be questioned in any other place.

It is argued that as the only power of expulsion given to the Senate is in respect of its elected members, no power is conferred on the Senate to expel a member appointed by the Governor General. It is further argued that the power to suspend is only a less power than the power to expel and of the same character, and therefore that the Senate had no power to suspend an appointed Senator, and therefore that the Senate exceeded its authority in attempting to do so in this resolution, and its action was null.

We do not think that we can consider this question, for the reason that the period of suspension fixed in the resolution has expired, and, so far as we are advised, Alejandrino is now exercising his functions as a member of the Senate. It is therefore in this Court a moot question whether or not he could be suspended in the way in which he was. Equally so is the still more important question whether the Supreme Court of the Philippines had any jurisdiction by extraordinary writ of mandamus or injunction to require the Senate, a part of the Island Legislature, and a seperate branch of the Government, to rescind its resolution and to re-admit Alejandrino to the Senate as an active member.

It may be suggested, as an objection to our vacating the action of the court below, and directing the dismissal of the petition as having become a moot case, that while the lapse of time has made unnecessary and futile a writ of mandamus to restore Senator Alejandrino to the Island Senate, there still remains a right on

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his part to the recovery of his emoluments, which were withheld during his suspension, and that we ought to retain the case for the purpose of determining whether he may not have a mandamus for this purpose. We are not advised from his petition what the emoluments of his office during that period would be, except his salary. We infer from the averment of his petition that as the suspension was in part retroactive, he was paid what was due him during the month of January, 1924. It is difficult for the Court to deal with this feature of the case, which is really only a mere incident to the main question made in the petition and considered in the able and extended brief of counsel for the petitioner and the only brief before us. That brief is not in any part of it directed to the subject of emoluments, nor does it refer us to any statute or to the rules of the Senate by which the method of paying Senators' salaries is provided, or in a definite way describe the duties of the officer or officers or committee charged with the ministerial function of paying them. The petition in describing the defendants avers that certain of them being Senators "are besides members of the Committee on Accounts of the Senate who approve the payment of the emoluments that Senators are entitled to receive." Section 7 of the petition is as follows:

"That the defendants, in the respective capacities in which they are sued, attempt to comply with, execute and carry into effect, or to cause to be complied with, executed and carried into effect, the suspension of the plaintiff depriving him, during the period of one year, of the exercise of his office and of all of his prerogatives, privileges and emoluments as Senator, as said defendant Senators and their President do not recognize the plaintiff's right to exercise such office and prevent him from exercising same, and cause all the officers, employes and other subordinates of the Senate not to recognize the plaintiff as Senator and to prevent him from exercising his office and enjoying his prerogatives, privileges and emoluments, and the President of the Senate, moreover, gives the necessary orders for the carrying into effect of said order of suspension, and the other defendants Faustino Aguilar and Bernabe Bustamente execute and comply with the orders and restrictions of the Senate and its President in order that the plaintiff may not be recognized as Senator and may not exercise his prerogatives and privileges as such Senator in the Senate building and the defendant Francisco Dayaw, Official Paymaster of the Senate requires him to refund his emoluments received corresponding to the period that has already elapsed from January 1st of this year and refuses to pay the emoluments to which the plaintiff is entitled."

We must assume, in view of the injunction of Congress in the Autonomy Act, that Senators shall receive an annual compensation to be fixed by law, that there is some official or board charged with the executive and ministerial duty of paying the Senatorial salaries against whom a Senator entitled might procure a mandamus to compel payment. But the averments of the petition do not set out with sufficient clearness who that official or set of officials may be. Were that set out, the remedy of the Senator would seem to be by mandamus to compel such official in the discharge of his ministerial duty to pay him the salary due, and the presence of the Senate as a party would be unnecessary. Should that official rely upon the resolution of the Senate as a reason for refusing to comply with his duty to pay Senators, the validity of such a defense and the validity of the resolution might become a judicial question affecting the personal right of the complaining Senator properly to be disposed of in such action, but not requiring the presence of the Senate as a party for its adjudication. The right of the petitioner to his salary does not therefore involve the very serious issue raised in this petition as to the power of the Philippine Supreme Court to compel by mandamus one of the two legislative bodies constituting the legislative branch of the Government to rescind a resolution adopted by it in asserted lawful discipline of one of its members for disorder and breach of privilege. We think, now that the main question as to the validity of the suspension has become moot, the incidental issue as to the remedy which the suspended Senator may have in recovery of his emoluments if illegally withheld, should properly be tried in a separate proceeding against an executive officer or officers as described. As we are not able to derive from the petition sufficient information upon which properly to afford such a remedy, we must treat the whole cause as moot and act accordingly. This action on our part of course is without prejudice to a suit by Senator Alejandrino against the proper executive officer or committee by way of mandamus or otherwise to obtain payment of the salary which may have been unlawfully withheld from him.

The case having become moot as respects its main features, and the other feature being incidental and not in itself a proper subject for determination as now presented, further steps looking to an adjudication of the cause can neither be had here nor in the

court below. In this situation we must, following the established practice of this Court, vacate the judgment below and remand the cause with directions to dismiss the petition without costs to either party. *Public Utility Commissioners* v. *Compania General De Tabacos De Filipinas*, 249 U. S. 425; *Brownlow* v. *Schwartz*, 261 U. S. 216, and cases cited.

Judgment vacated with directions to dismiss petition without costs to either party.

A true copy.

Test

Clerk, Supreme Court, U. S.